# KILLING THROUGH THEIR KIDS

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ABSTRACT

*In early 2024, James and Jennifer Crumbley were sentenced to over a decade in prison after their son, Ethan, shot and killed four classmates at Oxford High School in Michigan. The Crumbley parents incurred manslaughter liability by ignoring Ethan's deteriorating mental state, gifting him the murder weapon, and failing to act on concerns about Ethan's behavior on the day of the shooting. The Crumbleys were the first parents of a school shooter to be convicted of a homicide in American history. This Article suggests they will be far from the last. Indeed, less than one year after the Crumbley convictions, Colin Gray—whose son committed the shooting at Apalachee High School—was charged with manslaughter and second-degree murder.*

*Current coverage of the Crumbley parents' convictions has cabined their case as an outlier, unlikely to repeat due to its uniquely egregious facts. This Article argues that charging and convicting the parents of a school shooter will recur because similar conduct has produced parental homicide liability for over a century in the form of homicide by medical neglect and passive abuse.*

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*Parental homicide liability by medical neglect and passive abuse form a foundation from which convicting a school shooter's parents becomes less surprising. By analyzing the Crumbley parents' convictions in the context of medical neglect and passive abuse, this Article draws out a test to determine when parental homicide liability might attach following a school shooting. This duty to prevent test asks if the parents (1) ignored clear warning signs about the child's deteriorating mental health, (2) facilitated the child's access to a weapon, and finally, (3) ignored additional warnings about the child's violent ideations. When each prong of the duty to prevent test is met, parental homicide liability following a school shooting tracks not only the theory of liability upon which the Crumbleys were convicted, but also the traditional and well-established components of homicide liability for medical neglect and passive abuse. Finally, this Article suggests that school officials who meet each prong of the test may incur similar liability under certain circumstances.*

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*"These convictions are not about poor parenting.... These convictions confirm repeated acts, or lack of acts, that could have halted an oncoming runaway train."*[1]

## INTRODUCTION

When gunshots and screams rang out at Oxford High School on November 30, 2021,[2] perhaps few thought: "What about the parents?" In the days that followed, as innumerable Americans received the all-too-familiar notification that yet another school shooting took the lives of four children in Michigan,[3] still few probably thought: "What about the parents?" As Oakland County prosecutors prepared to charge fifteen-year-old Ethan Crumbley as a terrorist for perpetrating the deadliest school shooting in Michigan's history, the thought came to lead prosecutor Karen McDonald, who asked her colleagues: "What about the parents?"[4]

For many, the once-unimaginable tragedy of children murdered at school has become a cruel and omnipresent backdrop of the American experience. In 2023 alone, there were 350 school shootings in the United States, killing 57 and wounding 191.[5] Although school shootings are increasing in volume and lethality,[6] they have been a sad stitch in the fabric of American life for over a half-century:

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1. Ed White, *Michigan School Shooter's Parents Sentenced to 10 Years in Prison for Not Stopping a 'Runaway Train,'* AP NEWS (Apr. 9, 2024, at 19:55 ET), https://apnews.com/article/james-crumbley-jennifer-crumbley-oxford-school-shooting-e5888f615c76c3b26153c34dc36d5436 [https://perma.cc/4B7K-C538] (quoting Oakland County Judge Cheryl Matthews during her sentencing of Jennifer and James Crumbley).

2. *See* 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, at 17:51 ET), https://www.cnn.com/2023/12/08/us/oxford-shooting-ethan-crumbley-sentencing [https://perma.cc/42CZ-ZQMY].

3. *See* White, *supra* note 1.

4. John Woodrow Cox, *Guilty: Inside the High-Risk, Historic Prosecution of a School Shooter's Parents*, WASH. POST (July 8, 2024, at 06:00 ET), https://www.washingtonpost.com/investigations/interactive/2024/michigan-prosecutors-crumbley-parents-oxford-school-shooting/ [https://perma.cc/VNN8-PAUS].

5. David Riedman, *How Many School Shootings? All Incidents from 1966-Present*, K-12 SCH. SHOOTING DATABASE (2025), https://k12ssdb.org/all-shootings [https://perma.cc/5FF2-LABY].

6. *Id.*

Between 1970 and 2022 there were 2,069 school shootings in the United States.[7]

Despite the seeming regularity of school shootings in America, Oakland County prosecutors made history in securing the first-ever homicide conviction of a school shooter's parents when a Michigan court found James and Jennifer Crumbley guilty of manslaughter in 2023.[8] The Crumbley parents were convicted based on their refusal to treat Ethan's obvious mental health concerns and the fact that they purchased and gifted Ethan the firearm he used to murder his classmates.[9]

Why did the Crumbleys' failure to prevent this tragedy tread beyond the bounds of Michigan's child abuse, endangerment, and neglect statutes and into the realm of homicide liability? The Crumbleys did not pull a trigger, nor did they expressly encourage or groom their son to do so.[10] They were not present at the Oxford High School shooting.[11] How could a mother and father reasonably predict and prevent their son's shooting rampage that left four high schoolers dead? Why have other parents whose children have committed crimes as heinous as Ethan Crumbley's not been found guilty of homicide?

I initially set out to build a body of research highlighting the oddity of the Crumbley parents' convictions in the context of American homicide jurisprudence and the parent-child relationship. What became apparent, however, is that while this may be the first time a school shooter's parents have been found guilty of homicide, a great number of parents have faced homicide liability under similar circumstances. In fact, nearly every state has convicted parents who did not actively participate in a resulting death and

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7. *Shooting Incidents at K-12 Schools (Jan 1970-Jun 2022)*, CTR. FOR HOMELAND DEF. ON SEC.: SCH. SHOOTING SAFETY COMPENDIUM, https://web.archive.org/web/20240103132442/https://www.chds.us/sssc/data-map [https://perma.cc/J2RS-XKXF].

8. Quinn Klinefelter, *James and Jennifer Crumbley, a School Shooter's Parents, Are Sentenced to 10-15 Years*, NPR (Apr. 10, 2024, at 05:14 ET), https://www.npr.org/2024/04/09/1243555351/crumbley-james-jennifer-ethan-parents-oxford-school-shooter-sentence [https://perma.cc/5Z23-62XZ].

9. *See id.*

10. *See id.*

11. *See id.*

were as far removed from predicting tragic outcomes as the Crumbleys.[12]

This Article focuses on two types of homicidal parents: (1) parents who cause their child's death through medical neglect and (2) passive abusers. Like James and Jennifer Crumbley, parents whose children die of medical neglect incur homicide liability by failing to heed warning signs and intervene to obtain life-saving treatment.[13] Passive abusers are parents who do not lay a hand on their children but fail to protect them from an abusive third party.[14] Like the Crumbleys, passive abusers incur homicide liability by failing to control or prevent another person's dangerous behavior that results in a child's death.[15]

Of course, James and Jennifer Crumbley—unlike parents who kill by medical neglect or passive abuse—were convicted of homicide offenses involving victims other than their own child.[16] I argue that (1) the parental duty itself may encompass a duty to prevent a child from harming third parties; and (2) even under a narrow view of a parental duty, limited to preventing harms to one's *own* child, the deaths of third parties are still appropriate and natural sources of liability for parents if their deaths are foreseeable. These conclusions rely primarily on the Restatement (Second) of Torts, state caselaw, and the Model Penal Code (MPC).

The Crumbley convictions, while novel in factual circumstances, are consistent with traditional notions of parental homicide liability. Their convictions are less of a departure from history than they might otherwise appear, and I predict that parental homicide prosecutions—and convictions—will become more frequent following school shootings. Part I outlines the facts surrounding the Oxford High School shooting and James and Jennifer Crumbley's criminal conduct and convictions.

Part II discusses widespread parental homicide liability, across a majority of states, for medical neglect and passive abuse. Those cases involve conduct similar in significant part to the Crumbleys':

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12. *See infra* note 123 and accompanying text.
13. *See infra* Part II.A.
14. *See infra* Part II.B.
15. *See infra* Part II.B.
16. *See* Klinefelter, *supra* note 8.

homicide by omission and failing to prevent the actions of a violent third party, despite not being present at the time of the killing. Part II also discusses the victim-identity gap between medical neglect and passive abuse and cases like James and Jennifer Crumbley's.

Part III concludes that the similarities between the Crumbley parents' convictions and traditional parental homicide by medical neglect and passive abuse support continued parental homicide prosecutions following a school shooting in many circumstances. This theory is currently being tested in real time by the manslaughter and murder charges filed against Colin Gray, whose son shot and killed two students and two teachers in the 2024 Apalachee High School shooting.[17]

Part III also extracts commonalities between traditional parental prosecutions and the Crumbley convictions to craft a test to determine when future parents will be prosecuted for homicide after their children commit a school shooting. This *duty to prevent* test indicates parents will be found liable for homicide when they (1) ignore warning signs indicating their child's mental health crisis, (2) subsequently provide the child a means of harming others, and (3) ignore additional warnings about their child's violent ideations. Finally, I propose that the *duty to prevent* test may even subject school officials to homicide liability following a school shooting if the appropriate circumstances are met.

## I. *PEOPLE V. CRUMBLEY*: WARNING SIGNS AND FAILURE TO ACT

Ethan Crumbley's pleas for help began at least eight months before he perpetrated "the deadliest high school shooting in Michigan history."[18] In March 2021, Ethan began sending his mother text messages displaying high levels of paranoia: "'There is someone in the house' ... 'I got some videos' '[a]nd a picture of the demon'; 'It is

17. Mallika Kallingal & Devon M. Sayers, *Georgia School Shooter and His Father Indicted on New Counts in Apalachee High School Killings*, CNN (Oct. 17, 2024, at 18:39 ET), https://www.cnn.com/2024/10/17/us/colt-colin-gray-apalachee-school-shooting/index.html [https://perma.cc/UW2P-RVQA].

18. 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 [https://perma.cc/FQF9-FSUQ].

throwing BOWLS'; 'I am not joking.'"[19] Ethan sent these messages over a period of more than a week and received either delayed or no response from his mother, Jennifer Crumbley.[20] Jennifer did exchange contemporaneous texts with Ethan's father, James Crumbley, commenting that Ethan appeared "really worked up and out of control."[21] James and Jennifer Crumbley did not respond to some of Ethan's messages because they were horseback riding.[22]

On April 5, 2021, Ethan sent his best friend a text message stating he would ask his parents to arrange for psychiatric treatment, but that "this time [he was] going to tell them about the voices."[23] Shortly afterward, Ethan told the same friend that his plea for help went unanswered: His father told him to "suck it up" and his mother laughed at him.[24] In August of 2021, Ethan sent the same friend a video of him loading ammunition "into a .22-caliber Kel-Tec handgun registered to James," along with a text stating "now it's time to shoot up the school ... JKJKJKJKJK."[25]

Ethan's troubled thoughts made their way into his personal journal, which contained drawings of a demon and a decapitated animal.[26] Each of the twenty-one pages in Ethan's journal contained plans to commit a school shooting.[27] One page ominously predicted: "I will cause the biggest school shooting ever in the state ... I WILL KILL EVERYONE I F*KING SEE."[28] Ethan's parents were aware he kept a journal, but the State of Michigan provided no evidence at trial that either parent was aware of its contents.[29] Nevertheless, the journal explicitly blamed Ethan's deteriorating and increasingly violent state on Jennifer and James's inaction: "I have fully mentally lost it after years of fighting with my dark side. My parents won't listen to me about help or a therapist ... I have zero help for

19. People v. Crumbley, 11 N.W.3d 576, 580 (Mich. Ct. App. 2023).
20. *See id.*
21. *Id.*
22. *See id.*
23. *Id.* at 581.
24. *Id.*
25. *Id.* No evidence was presented at James and Jennifer's trials that they had ever viewed Ethan's messages with his friend. *Id.* at 581 n.3.
26. *See id.* at 582.
27. *Id.*
28. *Id.*
29. *Id.* at 582 n.5.

my mental problems and it's causing me to shoot up the f*king school."[30] A sample page from Ethan's journal, including his statement, "All I need is my 9mm Pistol which I am currently begging my dad for," was displayed at his trial.[31]

Four days before the shooting, James bought Ethan a 9mm SIG Sauer handgun.[32] The next day, Jennifer took Ethan to a shooting range with the handgun, where she purchased ammunition, and he showed her how to shoot the firearm.[33] On the following Monday, when Ethan returned to school, a teacher caught him shopping for handgun ammunition on his cell phone.[34] The school attempted to call Jennifer and left a voicemail, in response to which she texted Ethan: "Lol. I'm[ ] not mad, you have to learn not.to.get [sic] caught."[35] Jennifer mentioned the interaction to a coworker, who later recalled that Jennifer "did not seem concerned."[36]

The next day, Ethan's English teacher observed him watching a video of a shooting on his cell phone in class and reported him to school officials.[37] By the time school officials received the report, Ethan had transitioned to math class.[38] In math, Ethan created a series of drawings on his class worksheet: a drawing of a gun resembling the SIG Sauer handgun, a bullet-riddled bloody body, and the words, "Help me," "my life is useless," "The world is dead," and "Blood everywhere."[39] As school officials entered his math class, Ethan attempted to modify and alter the drawings to portray happier messages.[40] Ethan scribbled out the drawings of the handgun, bullet-riddled body, and the words "Blood everywhere," adding "I love my life so much," "Harmless act," "Were [sic] all friends here,"

30. *Id.*

31. Amber Ainsworth, *Ethan Crumbley's Journal, Search History Show Thorough Planning of Oxford High School Shooting*, FOX 2 DETROIT (Jul. 27, 2023, at 16:29 ET), https://www.fox2detroit.com/news/ethan-crumbley-journal-search-history-oxford-high-school-shooting [https://perma.cc/QNJ4-PRN8].

32. *See Crumbley*, 11 N.W.3d at 582.

33. *Id.*

34. *Id.* at 583.

35. *Id.* (alteration in original).

36. *Id.*

37. *Id.*

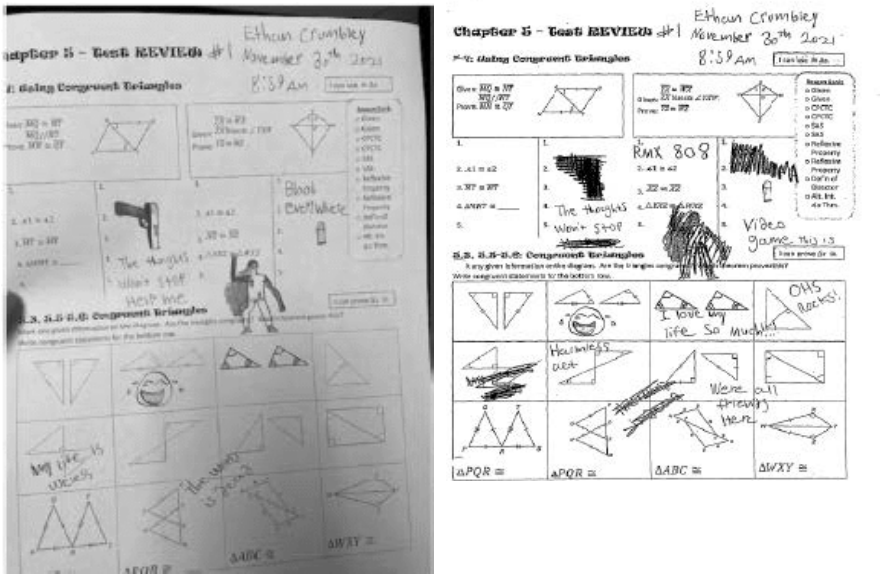
38. *Id.* at 583-84.

39. *Id.* at 584.

40. *See id.* at 584-85.

"OHS Rocks!," and "Video game this is."[41] Ethan was taken to the school counselor's office.[42]

Figure 1. The original version of Ethan's worksheet drawings, left, and his altered version, right[43]




The school counselor contacted James and Jennifer.[44] The counselor asked them to meet at the school and forwarded a photo of Ethan's drawings.[45] The meeting with Ethan and his parents lasted approximately fifteen minutes.[46] Jennifer did not speak to Ethan, but James encouraged Ethan to talk to him and Jennifer and to write in his journal.[47] James and Jennifer left, while Ethan

41. *See id.* "OHS" presumably refers to Oxford High School.
42. *See id.* at 585.
43. *Id.* at 584-85.
44. *Id.* at 585.
45. *Id.*
46. *See id.* at 586.
47. *Id.*

remained at school.[48] Neither the Crumbleys nor school officials checked Ethan's bag, which contained the SIG Sauer handgun and a journal entry asking forgiveness for the shooting Ethan planned for that day.[49] James and Jennifer declined to remove Ethan from the school because both claimed they needed to return to work,[50] although later evidence indicated they would have been permitted personal time off.[51]

Jennifer returned to work and confessed to her coworkers that she felt like a failure as a parent.[52] She then texted Ethan: "[Y]ou know you can talk to us and we won't judge."[53] Ethan responded: "[I know,] thank you. I'm sorry for that. I love you."[54] Fewer than ten minutes later, Ethan went to the bathroom, retrieved the handgun from his backpack, and began terrorizing Oxford High School.[55] When the gunfire ended and Jennifer received an active shooter alert from the school, she replied to Ethan's text message, saying, "I love you too," and "don't do it."[56] But by then, it was too late. Ethan had already shot a teacher and ten students, four of whom would succumb to their wounds and were later pronounced dead.[57]

Police executed search warrants for the Crumbley home on the day of the shooting and discovered the empty handgun case and missing 9mm ammunition.[58] The handgun, along with James's other firearms, was kept in a safe in the Crumbley parents' bedroom.[59] The safe was secured by a three-digit combination lock with a code of 000.[60]

For his role in the Oxford High School shooting, Ethan pleaded guilty to one count of terrorism, four counts of first-degree murder, and nineteen other charges, for which he received a life sentence

48. *Id.*
49. *See id.* at 583 n.7, 586.
50. *See id.* at 586.
51. *See id.* at 586 n.8.
52. *Id.* at 587.
53. *Id.*
54. *Id.*
55. *See id.*
56. *Id.*
57. *Id.* at 587-88.
58. *Id.* at 587.
59. *Id.*
60. *Id.*

without the possibility of parole.[61] For their failure to intervene and prevent Ethan's tragic actions, James and Jennifer Crumbley were charged with committing involuntary manslaughter.[62] In Michigan, involuntary manslaughter is a form of homicide requiring a mental state, or mens rea, of culpable criminal negligence, rather than active intent or knowledge.[63]

Essentially, to be guilty of involuntary manslaughter, the Crumbleys did not need to know Ethan was going to commit a shooting or intend for him to do so.[64] Rather, they obtained the requisite mens rea when they merely *should* have known, based on surrounding circumstances, that Ethan was going to commit a shooting and failed to take reasonable steps to prevent him from doing so.[65]

In Michigan, involuntary manslaughter is a common law offense,[66] meaning the offense and its elements are created by past court rulings rather than by statute.[67] Michigan courts define the elements of involuntary manslaughter as requiring that a defendant (1) causes a death, (2) without legal justification, (3) while acting in a grossly negligent manner or committing an inherently dangerous and unlawful act.[68] The criminal complaint against the Crumbleys alleged that each caused four deaths at Oxford High School by

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61. Artemis Moshtaghian, *Oakland County Prosecutor Comforted by "Sense of Peace and Closure" After Crumbley Sentencing*, CNN: MICHIGAN SCHOOL SHOOTER SENTENCED TO LIFE IN PRISON WITHOUT PAROLE (Dec. 8, 2023, at 18:04 ET), https://www.cnn.com/us/live-news/ethan-crumbley-sentencing-oxford-shooting-12-08-23/index.html [https://perma.cc/QYB5-HWY5].

62. *Crumbley*, 11 N.W.3d at 579.

63. *See, e.g.*, People v. Holtschlag, 684 N.W.2d 730, 740-41 (Mich. 2004). Alternatively, Michigan law allows for involuntary manslaughter convictions without any proof of mental state if prosecutors prove that the homicide occurred during the commission of an unlawful act. *See id.* at 741.

64. *See, e.g.*, People v. Orr, 220 N.W. 777, 779 (Mich. 1928) (defining negligence in involuntary homicide as requiring "(1) [k]nowledge of a situation requiring the exercise of ordinary care and diligence," "(2) [a]bility to avoid the resulting harm by ordinary care and diligence in the use of the means at hand," and "(3) [t]he omission to use such care and diligence" would reasonably appear "to prove disastrous").

65. *See id.*

66. *See* MICH. COMP. LAWS § 750.321 (2025) (defining "manslaughter" generally but failing to define "involuntary manslaughter"); People v. Herron, 628 N.W.2d 528, 535 (Mich. 2001) ("In Michigan, the penalty for involuntary manslaughter is codified, but the definition is left to the common law.").

67. DARRYL K. BROWN, CRIMINAL LAW 60 (2d ed. 2023) (ebook).

68. *In re* Gillis, 512 N.W.2d 79, 80 (Mich. Ct. App. 1994).

> storing his or her firearm and its ammunition so as to allow access to the firearm and ammunition by his or her minor child or the grossly negligent failure to perform the following legal duty, to wit: failure to exercise reasonable care to control his or her minor child so as to prevent him from intentionally harming others or from so conducting himself so as to create an unreasonable risk of bodily harm to others knowing that he or she has the ability to control his or her child and knowing of the necessity and opportunity to do so[.][69]

The Crumbleys' liability lay in their failure to heed warning signs about Ethan's deteriorating mental state and in their providing him access to the handgun, which prosecutors alleged caused the deaths at Oxford High School.[70] A key issue in the Crumbleys' trials and eventual convictions was causation.[71] Causation, requiring that the defendant *causes* a death, is an essential element of Michigan common law involuntary manslaughter.[72]

In reviewing the Crumbleys' interlocutory appeal challenging probable cause on the issue of causation, the Michigan Court of Appeals described Michigan law regarding the requisite causation for involuntary manslaughter.[73] Michigan, like many other states,[74] requires that a criminal act be both the factual and proximate cause of a resulting death.[75] The issue of factual causation, commonly referred to as "but for" causation, asks whether the death would still have occurred without the defendant's criminal act.[76] This was not a particularly tricky causation issue in the Crumbleys' case: Clearly, Ethan would not have been able to perpetrate a mass shooting using a handgun his parents purchased for him had they (1) not purchased him a handgun, (2) safely stored the handgun to prevent his unmonitored access, (3) removed him from Oxford High School

69. People v. Crumbley, 11 N.W.3d 576, 588 (Mich. Ct. App. 2023) (alteration in original).
70. *See id.* at 594.
71. *See id.* at 592-93 (discussing the Crumbleys' challenge to proximate causation).
72. *Id.* at 590 (citing People v. Head, 917 N.W.2d 752, 758 (Mich. Ct. App. 2018)).
73. *Id.*
74. *See generally, e.g.*, MODEL PENAL CODE § 2.03(1) (A.L.I. 1985) (describing the causation requirement in criminal law).
75. People v. Czuprynski, 926 N.W.2d 282, 289 (Mich. Ct. App. 2018).
76. *See* People v. Feezel, 783 N.W.2d 67, 74 (Mich. 2010).

on November 30, or probably even (4) secured appropriate mental health treatment for his deteriorating condition.[77]

Proximate causation can be much trickier, especially in crimes involving negligence. To prove proximate causation in Michigan, a prosecutor must establish that "the death is [not] so remote from the defendant's conduct that it would be unjust to permit conviction."[78] In less circular terms, "the victim's injury must be a 'direct and natural result' of the defendant's actions."[79] The ultimate touchstone of proximate causation is whether the resulting harm was reasonably foreseeable.[80]

Sometimes a third party's unlawful act, like Ethan's taking the handgun and committing the shootings, serves as another "superseding" cause of harm.[81] A superseding event or act severs proximate causation if it breaks the casual link between the defendant's act and the resulting harm.[82] If, however, the superseding act was reasonably foreseeable, then the defendant's causal link to the resulting harm remains intact.[83] Therefore, if the Crumbleys reasonably should have foreseen that Ethan would take the handgun and commit a shooting, they can be said to have proximately caused the resulting deaths at Oxford High School despite Ethan's own intervening actions.[84]

On interlocutory appeal, the Michigan Court of Appeals held that a jury could find that the Crumbleys should have reasonably

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77. *See Crumbley*, 11 N.W.3d at 591 ("The record squarely supports that 'but for' defendants' acts and omissions, [Ethan] would not have killed the victims that day.").

78. *See* People v. Tims, 534 N.W.2d 675, 680 (Mich. 1995).

79. People v. Schaefer, 703 N.W.2d 774, 785 (Mich. 2005) (quoting People v. Barnes, 148 N.W. 400, 406 (Mich. 1914)).

80. *See, e.g.*, *Crumbley*, 11 N.W.3d at 591-94 (discussing probable cause as hinging on foreseeability); *see also* Paroline v. United States, 572 U.S. 434, 448-49 (2014) (discussing foreseeability as a determinative factor in proximate-causation analysis).

81. *See, e.g.*, *Crumbley*, 11 N.W.3d at 591 ("[I]ntentional misconduct by the victim or a third party will *generally* be considered a superseding cause.... [and] *generally* the causal link is severed and the defendant's conduct is not regarded as a proximate cause of the victim's injury or death." (citations omitted) (quoting *Schaefer*, 703 N.W.2d at 786)).

82. People v. Feezel, 783 N.W. 2d 67, 74 (Mich. 2010) (quoting *Schaefer*, 703 N.W.2d at 785).

83. *Schaefer*, 703 N.W.2d at 785.

84. *See Crumbley*, 11 N.W.3d at 592-93. The Michigan Court of Appeals included an interesting discussion on whether Ethan's actions could even be considered an intervening cause, given the parent-child relationship between him and the Crumbleys, and the manner in which their negligence and his actions were intrinsically connected. *See id.* at 593-94.

foreseen that failing to secure the handgun could result in Ethan committing a shooting on November 30.[85] In relevant part, the court found that on November 30, the Crumbleys were aware that (1) Ethan's mental health was spiraling, (2) he had asked them for mental health treatment to no avail, (3) they had purchased a handgun and made it readily accessible to Ethan, (4) Ethan was researching ammunition in school the day prior, and finally, (5) on the day of the shooting, Ethan drew a picture of the handgun, a bullet-riddled body, and a series of violent phrases on his math worksheet.[86]

Despite that knowledge, the Crumbleys made no attempt to seek treatment for Ethan's condition, nor did they properly secure the handgun.[87] Perhaps most strikingly, the Crumbleys, who were in a unique position to understand Ethan's access to a firearm resembling the one drawn on his math sheet, failed to remove him from school or look inside his backpack to see if he had taken the SIG Sauer handgun.[88] The Michigan Court of Appeals, and the juries that convicted the Crumbleys, found that it was reasonably foreseeable that these failures would result in Ethan committing a shooting that day.[89] Because they were in a position to stop reasonably foreseeable deaths and failed to do so, James and Jennifer Crumbley were convicted of involuntary manslaughter, a homicide offense.[90]

## II. THE BUILDING BLOCKS OF PARENTAL HOMICIDE LIABILITY

James and Jennifer Crumbley are the first parents in American history to be found guilty of a homicide for their child's school

85. *Id.* at 593.

86. *Id.* at 592.

87. *Id.* at 593-94.

88. *Id.* at 593.

89. *Id.*; *see also* Jacey Fortin, *James Crumbley Found Guilty in Michigan School Shooting Trial*, N.Y. TIMES (Mar. 14, 2024), https://www.nytimes.com/2024/03/14/us/james-crumbley-oxford-school-shooting.html [https://perma.cc/ZAY5-5CEA]. The court noted that the mens rea of criminal negligence did not require the Crumbleys to foresee that Ethan would commit a shooting at his school, killing four victims; instead, the required foreseeability was merely that Ethan was going to commit *some* type of shooting that day. *See Crumbley*, 11 N.W.3d at 594 n.12.

90. *See* White, *supra* note 1.

shooting.[91] Their convictions tested the limits of criminal liability for breaches of parental duty. Typically, in criminal law, a defendant must actually *do* something to incur criminal liability. The failure to render lifesaving aid or assistance, absent a special relationship, is typically insufficient.[92] The requisite actus reus to incur criminal liability, in most instances, involves a voluntary physical act causing a resultant harm.[93] While homicide can be considered a "result crime," that is, one that can be accomplished in numerous ways but always requires the result of human death, it still typically requires a voluntary physical act.[94]

While some forms of homicide, including involuntary manslaughter and negligent homicide, do not require an *intent* to kill,[95] some type of voluntary physical act causing the harm is still usually required.[96] Take, for example, a defendant convicted of involuntary manslaughter for striking and killing a pedestrian while driving drunk: Although the defendant did not voluntarily and intentionally direct the vehicle into the pedestrian, they undertook the voluntary and criminal physical act of driving a vehicle while intoxicated.

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91. *Id.*

92. *Compare* MODEL PENAL CODE § 2.01 (describing the requirement of voluntary act), *with* Niraj Chokshi, *Teenagers Recorded a Drowning Man and Laughed*, N.Y. TIMES (July 21, 2017), https://www.nytimes.com/2017/07/21/us/video-drowning-teens-florida.html [https://perma.cc/DJ8W-WYYW] (describing inability to prosecute bystanders who laughed and observed as a man drowned in a pond).

93. JOSHUA DRESSLER & STEPHEN P. GARVEY, CRIMINAL LAW: CASES AND MATERIALS 133 (9th ed. 2022). Of course, Jennifer and James Crumbley did not *just* fail to take action, they also positively procured a handgun and made it accessible to a mentally and emotionally disturbed child. *See Crumbley*, 11 N.W.3d at 593. At the same time, their actions on the day of the shooting look more like criminally negligent omissions of duty. Buying a handgun is not a *criminal* act. But the failure to properly store the handgun, to seek medical attention for their son, and to remove him from school on November 30, constituted criminal negligence and a breach of parental duty (and, in many states, criminal acts unto themselves). *See id.*; *see also, e.g.*, *infra* note 123 and accompanying text (discussing parental homicide liability for medical neglect across the United States, citing cases in thirty-five jurisdictions). All the same, if one were to analyze the Crumbleys' criminal conduct as involving a traditional voluntary act, then their conviction would be even less surprising. And to the degree we view purchasing a firearm or other weapon and making it available to a child like Ethan as a positive voluntary act, parental prosecutions following a school shooting are even *more* likely to recur because they bear a greater similarity to traditional homicide.

94. *See* DRESSLER & GARVEY, *supra* note 93, at 133 (discussing murder as a "result crime" but noting the requirement of a voluntary act nonetheless).

95. *See generally* MODEL PENAL CODE § 210.1 (A.L.I. 1985) (defining homicide).

96. *See generally id.* § 2.01 (noting the requirement of voluntary physical action—compared to, for example, involuntary reflexes—for most offenses).

The parent-child relationship can create criminal liability by omission, rather than positive and voluntary action.[97] For example, states regularly prohibit and punish child neglect, which can be accomplished without a voluntary physical act.[98] States might even prohibit unsafe storage of a firearm and hold parents like James and Jennifer Crumbley criminally liable for failing to effectively prevent their children from gaining access to a gun: Thirty states and the District of Columbia criminally sanction storing a firearm so as to provide access to a minor child.[99] In that context, some

97. *See, e.g.*, People v. Beardsley, 113 N.W. 1128, 1129-30 (Mich. 1907) (describing parental duty as requiring action and creating criminal liability for omission).

98. *See, e.g.*, N.Y. PENAL LAW § 260.10 (McKinney 2025) (including the failure or refusal to exercise reasonable diligence as constituting the offense of endangering the welfare of a child). Child neglect is, of course, a distinct and arguably less severe criminal offense than homicide.

99. *See* CAL. PENAL CODE §§ 25100, 25110 (West, Westlaw with urgency legislation through Ch. 1 of 2025 Reg. Sess.) (criminalizing storing a firearm where the person reasonably should know a minor will gain access without permission, including felony liability when the unsafe storage results in death or great bodily injury); COLO. REV. STAT. § 18-12-108.7 (2024) (creating felony criminal liability for unlawfully providing a minor firearm access); CONN. GEN. STAT. § 29-37i (2025) (criminalizing unsafe storage); DEL. CODE ANN. tit. 11 § 603 (2025) (including parents knowingly, intentionally, recklessly, or negligently providing access to a firearm in "reckless endangerment" definition); D.C. CODE § 7-2507.02 (2025) (criminalizing storing a firearm negligently so as to permit minor access); FLA. STAT. § 790.174 (2024) (creating misdemeanor criminal liability for failing to secure loaded firearm from minor); HAW. REV. STAT. § 134-10.5 (2025) (criminalizing storing a firearm in such a way as to reasonably permit a minor's access); 720 ILL. COMP. STAT. 5/24-9 (2024) (criminalizing storing a firearm such that a minor under the age of fourteen is likely to gain access as a misdemeanor); IND. CODE § 35-47-10-7 (2024) (creating felony liability for parent's knowing, intentional, or reckless provision of a firearm to a minor while aware of a substantial risk that the child will use the firearm to commit a felony); IOWA CODE § 724.22(7) (2025) (criminalizing loaded-firearm storage permitting access by a child under fourteen); ME. STAT. tit. 17-A § 554(B-4) (2025) (criminalizing negligent firearm storage that allows access by a child under sixteen); MD. CODE ANN., CRIM. LAW § 4-104 (LexisNexis 2025) (imposing misdemeanor criminal liability for storing a firearm where a defendant should know an unsupervised minor has access); MASS. GEN. LAWS ch. 140, § 131L (2024) (prohibiting unsafe storage of firearms generally); MICH. COMP. LAWS § 28.429 (2025) (penalizing failure to safely store firearms away from minors as a misdemeanor); MINN. STAT. § 609.666 (2024) (penalizing negligently storing a loaded firearm in a location accessible to children as a gross misdemeanor); MISS. CODE ANN. § 97-37-13 (2025) (imposing misdemeanor criminal liability for providing a firearm to minor); NEV. REV. STAT. § 41.472 (2024) (penalizing negligent firearm storage from a minor as a misdemeanor, but a felony if resulting in the child's violent act); N.H. REV. STAT. ANN. § 650-C:1 (2025) (creating a fine-only criminal offense for negligently storing a firearm leading to a child's improper use); N.J. STAT. ANN. § 2C:58-15 (criminalizing recklessly permitting minors to gain access to firearms); N.M. STAT. ANN. § 30-7-4.1 (2025) (criminalizing negligently storing a firearm leading to a minor's access as a misdemeanor if the minor brandishes or causes a minor injury, and as a felony if the minor causes death or great bodily

observers may be surprised to see the Crumbleys convicted of a homicide offense for omissive conduct typically associated with child neglect or failure to safely secure a firearm. But, as will be discussed in this Part, parents have been found guilty of homicide in most states for other acts of omission leading to a child's death.[100]

While the Crumbley prosecution was unprecedented in convicting a school shooter's parents of homicide, the building blocks to reach this result were already in place and well established. Nearly every state's courts have found parents who fail to treat a child's illness liable for homicide through a criminal act of omission combined with a mental state of criminal negligence.[101] Perhaps one of the most shocking aspects of the Crumbley convictions is that Ethan committed the murders knowingly and intentionally, while his parents were not physically present.[102] However, state courts considering homicide by passive abuse have acknowledged that a third party committing an intentional killing outside the presence of a defendant parent will not absolve that parent from homicide liability for failing to prevent the death.[103]

That widespread precedent, finding parental homicide liability based on medical neglect and passive abuse, helps explain the

injury); N.Y. PENAL LAW § 265.45 (McKinney 2025) (creating a misdemeanor for failing to safely store a firearm with a minor in the home); N.C. GEN. STAT. § 14-315.1 (2025) (same); OKLA. STAT. tit. 21 § 1273 (West 2025) (criminalizing recklessly providing firearm access to a minor); OR. REV. STAT. § 166.395 (2023) (criminalizing failure to safely store a firearm, with penalty enhancement if a minor gains access because of improper storage); 11 R.I. GEN. LAWS § 11-47-60.1 (2025) (criminalizing unsafe firearm storage, including felony liability if obtained by a child who uses the firearm to commit a crime or cause injury to themselves or to any other person); TENN. CODE ANN. § 39-17-1320 (2025) (criminalizing recklessly providing a handgun to a juvenile as a misdemeanor, and a felony if the parent should have known of a substantial risk that the juvenile would commit a felony with the handgun); TEX. PENAL CODE ANN. § 46.13 (West 2023) (criminalizing storing a firearm so as to negligently permit a child's access); VT. STAT. ANN. tit. 13 § 4024 (2025) (criminalizing negligent firearm storage so as to provide a minor access as a misdemeanor, with felony liability if the minor causes death or great bodily harm); VA. CODE ANN. § 18.2-56.2 (2025) (criminalizing recklessly storing a loaded, unsecured firearm and providing a minor access); WASH. REV. CODE § 9.41.360 (2025) (criminalizing negligent storage leading to a minor's possession, with felony liability if the minor causes personal injury or death); WIS. STAT. § 948.55 (2024) (creating misdemeanor liability for reckless firearm storage leading to a child's access).

100. *See infra* notes 122-23, 217-21 and accompanying text.

101. *See infra* notes 122-23 and accompanying text.

102. People v. Crumbley, 11 N.W.3d 576, 579, 583, 586-87 (Mich. Ct. App. 2023).

103. *See infra* notes 215-17 and accompanying text (listing and discussing cases in which a state court affirmed a conviction for homicide by a passive abuser).

otherwise-unprecedented Crumbley convictions. Like parents who kill by medical neglect, the Crumbleys were found guilty precisely because they did not *do* anything—even though positive action is typically required for the actus reus of other complete homicidal behavior.[104] Like passive abusers, the Crumbleys' liability lay in failing to prevent a third party's intentional criminal act. Put together, these precedents for parental homicide liability, for failing to secure intervening medical treatment and failing to prevent a third party's violent act, largely answer some of the questions of culpability and novelty that led criminal law scholars and reporters to initial skepticism or shock over the Crumbley conviction.[105]

The state law analyses in Subparts A and B of this Part focus on cases in which medical neglect or failure to prevent a third party's violence resulted in homicide liability, whether in the form of murder, manslaughter, or another offense requiring a resulting death as an element. The following subparts seek to answer why and when a negligent parent will be punished for a substantive offense beyond the bounds of statutes—like child-abuse and neglect statutes—that seek to encompass parental negligence, seemingly in all its forms.

But the medical-neglect and passive-abuse cases cited in this Article involve a parent's conviction for their *own* child's death. James and Jennifer Crumbley were convicted of involuntary manslaughter for the deaths of *other* child victims at their son's hand. Subpart C discusses parental duty at civil law, which has been invoked in at least one state criminal system, and the MPC's explanation of proximate causation. Both indicate that a parent's failure of duty to their own child can proximately cause injury or death to another child.

### *A. Medical Neglect: Parental Homicide by Omission*

Parental or caretaker homicide by medical neglect involves a defendant's failure to obtain lifesaving medical treatment for a

104. *See Crumbley*, 11 N.W.3d at 593; DRESSLER & GARVEY, *supra* note 93, at 133.

105. *See, e.g.*, Jolie Bodner Zangari, *An Unprecedented Verdict: Expanding Parental Liability for Children's Violent Crime*, 39 CRIM. JUST. 7, 11 (2024) ("[T]he Crumbley case represents a striking leap in the legal theory of holding parents criminally responsible for intentional acts committed by their children that result in injury or death.").

child in severe distress.[106] In analyzing cases of parental homicide based on medical neglect, this Article focuses on cases that most resemble the Crumbleys' mode of liability. This Subpart examines cases in which parents' homicidal acts, like those of James and Jennifer Crumbley, do not include actual physical abuse of a child. The vast majority of those cases involve a parental conviction in which the prosecution provided no evidence of physical abuse. The few cases in which evidence was presented that the defendant actively abused their child were screened so as to only include cases in which the theory of legal liability rested solely on the failure to obtain medical care.[107]

A typical instance of parental homicide by medical neglect might resemble the following fact pattern: A two-week-old infant comes down with pneumonia.[108] The child appears yellow and must be fed with an eye dropper because she is too weak to breastfeed.[109] It is clear, at this point, that the baby is severely ill. Roughly a week later, as the child's symptoms become more severe, her breathing and heartbeat stop.[110] Her parents use mouth-to-mouth resuscitation to revive her.[111] Over the course of the day, the baby's breathing and heartbeat repeatedly stop, with her parents reviving her each time by mouth-to-mouth resuscitation.[112] By the next morning, the baby dies.[113]

This example comes from *People v. Sealy*, a 1984 case from the Michigan Court of Appeals.[114] Kenneth Sealy was convicted, as were James and Jennifer Crumbley, of Michigan's common-law involuntary manslaughter.[115] The *Sealy* court discussed involuntary manslaughter by medical neglect as requiring that a defendant (1) has a legal duty; (2) has capacity, means, and ability to perform said duty; (3) commits gross negligence in failing to perform the duty;

106. *See, e.g.*, State v. Mapp, 264 S.E.2d 348, 354 (N.C. Ct. App. 1980).

107. *See, e.g.*, *id.* (involving a child's death from choking on a blood clot, and in which some evidence was presented that the clot was caused by defendant's abuse, but conviction was sustained based on evidence of failure to provide medical care, rather than active abuse).

108. *See* People v. Sealy, 356 N.W.2d 614, 615-16 (Mich. Ct. App. 1984) (per curiam).

109. *See id.* at 615.

110. *See id.*

111. *See id.*

112. *See id.*

113. *See id.* at 616.

114. *See id.* at 615-16.

115. *See id.* at 615.

and (4) causes death as a direct and immediate consequence of the failure to act.[116] The Michigan Court of Appeals found Sealy guilty based on his failure to provide intervening medical treatment when it was objectively apparent that his daughter was seriously ill and her death was foreseeable.[117]

Seem familiar? If so, it may be because the theory of involuntary manslaughter liability involving medical neglect closely tracks the elements of James and Jennifer Crumbley's offense, at least in significant part. Putting aside their having provided Ethan with the firearm, the Crumbleys' criminal negligence included (1) their duty to recognize and treat Ethan's deteriorating mental state, which posed a foreseeable danger both to him and to others; (2) their capacity, means, and ability to procure treatment for him, given his outward signs of mental illness, repeated requests for treatment, and their knowledge of the violent drawings on his math worksheet on the day of the shooting; and (3) their neglectful failure to intervene, resulting in the foreseeable deaths of four of Ethan's classmates.[118]

Like the Crumbleys, parents who kill by medical neglect do not exhibit the typical actus reus associated with an affirmative criminal act.[119] These parents do not, in a legal sense, *actively* abuse or physically bring about the condition ultimately requiring medical treatment.[120] It is somewhat axiomatic in criminal law that liability will not lie in the failure to act, absent some legal duty and gross, criminal negligence.[121] As state caselaw—and perhaps common sense—makes clear, however, parents' and other caretakers'

116. *Id.* at 616 (describing elements for involuntary manslaughter by medical neglect and the requirement of gross negligence for Michigan common law manslaughter).

117. *Id.*

118. *See* People v. Crumbley, 11 N.W.3d 576, 592-94 (Mich. Ct. App. 2023).

119. *Compare id.* (imposing liability based on (1) parental duty, (2) means to perform duty, and (3) negligent failure to intervene which resulted in death), *with Sealy*, 356 N.W.2d at 616.

120. *See infra* note 123 and accompanying text. As discussed earlier in this Subpart, some cases of homicide by medical neglect include government evidence that a parent actively abused their child. *See supra* notes 106-07 and accompanying text. However, any case included in this Article, even those in which evidence was presented that a defendant physically abused their child, was decided based on homicide liability only for the failure to procure medical attention. *See, e.g.*, State v. Mapp, 264 S.E.2d 348, 354 (N.C. Ct. App. 1980).

121. *See, e.g.*, MODEL PENAL CODE § 2.01(1) (A.L.I. 1985) (describing a voluntary-act requirement, absent legal duty).

relationship and responsibilities to children can create criminal liability by failure to act.[122]

Parental homicide liability for medical neglect is well established in most American jurisdictions. Thirty-three states, one federal circuit, and the District of Columbia have convicted a parent or other caretaker of a homicide for failing to procure intervening medical assistance resulting in death.[123] In each of the cases

122. *See, e.g.*, *id.*; *see also* People v. Beardsley, 113 N.W. 1128, 1129-30 (Mich. 1907) (describing what relationships give rise to a legal duty, the omission of which creates criminal liability).

123. *See* State v. Weems, 619 S.W.3d 208, 209-10 (Tenn. 2021) (upholding conviction for reckless homicide when defendant took child to medical appointments and attempted to feed her, but the child nonetheless died from malnutrition); Landell v. State, 850 S.E.2d 419, 420, 424 (Ga. Ct. App. 2020) (remanding felony-murder conviction of defendant who failed to seek medical attention for their baby due to religious beliefs, because defendant was entitled to a jury instruction on involuntary manslaughter); State v. Lutz, 2017-0425 p. 23 (La. App. 1 Cir. 11/1/17), 235 So.3d 1114, 1117-18 (upholding second-degree murder conviction of child-victim's mother's boyfriend, who failed to seek medical attention when it was clear mother was underfeeding the child); State v. Goff, 2016 UT App 7, ¶¶ 3-4, 366 P.3d 413 (per curiam) (upholding conviction for child abuse homicide where defendant failed to secure medical attention for child who ingested methadone); People v. Pollard, 2015 IL App (3d) 130467, ¶¶ 1-3 (upholding first-degree murder conviction of defendant parent who failed to sufficiently respond to child's heart apnea monitor, resulting in death); United States v. Christie, 717 F.3d 1156, 1160 (10th Cir. 2013) (upholding defendant's conviction on both federal and New Mexico state second-degree murder charges for failing to secure medical attention for malnourished child; state murder charges dismissed after conviction on double jeopardy grounds); State v. Beagley, 305 P.3d 147, 149-50 (Or. Ct. App. 2013) (upholding criminally negligent homicide conviction for defendant who treated son's kidney disorder with prayer); State v. Neumann, 2013 WI App 58, ¶¶ 1-2, 6-7, 348 Wis. 2d 455, 832 N.W.2d 560 (upholding second-degree reckless homicide conviction for parent who treated child's diabetes with prayer, causing her death at eleven years old); State v. Hussing, No. 97972, 2012 WL 5292878, at *1 (Ohio Ct. App. Oct. 25, 2012) (upholding involuntary manslaughter conviction for defendant who allowed eight-year-old son, with stage IV Hodgkin's lymphoma, to deteriorate without seeking medical attention); Lucas v. Commonwealth, No. 2009-CA-000159-MR, 2012 WL 2360112, at *1 (Ky. Ct. App. Jun. 22, 2012) (affirming reckless-homicide conviction for defendant who was aware that six-year-old son was vomiting black matter as his condition deteriorated but never sought medical attention, leading to death); People v. Latham, 137 Cal. Rptr. 3d 443, 444-45 (Cal. Ct. App. 2012) (upholding second-degree murder conviction for defendant who failed to treat child's diabetes, resulting in death); State v. Rinehart, 383 S.W.3d 95 (Mo. Ct. App. 2012) (upholding felony-murder conviction for defendant who allowed child, born with respiratory illness, to die without medical care); Commonwealth v. Robidoux, 877 N.E.2d. 232 (Mass. 2007) (upholding first-degree murder conviction for parent who failed to secure medical attention for child who became malnourished from religious-based feeding routine); State v. Arends, No. 03-0420, 686 N.W.2d 265, 2004 WL 1159730, at *1 (Iowa Ct. App. 2004) (unpublished table decision) (upholding involuntary manslaughter conviction for child's mother's live-in boyfriend, who failed to seek medical treatment for the toddler who died); State v. Martinez, 68 P.3d 606, 612 (Haw. 2003) (upholding manslaughter conviction for

child's mother's boyfriend, who failed to secure timely medical care for child dying of asphyxiation); Jones v. State, 678 So. 2d 707, 710-11 (Miss. 1996) (reversing manslaughter conviction because of unrelated improper testimony, but holding that defendant's failure to obtain medical treatment for child who ingested cocaine was sufficient to find criminal negligence for manslaughter); State v. Norman, 808 P.2d 1159, 1160-61 (Wash. Ct. App. 1991) (upholding first-degree manslaughter conviction for defendant-parent, a member of the No-Name Fellowship Church, who treated son's diabetes with prayer, instead of medicine, resulting in death); State v. Cacchiotti, 568 A.2d 1026, 1026, 1030-31 (R.I. 1990) (affirming involuntary-manslaughter conviction, as a lesser included offense to charged murder, when some evidence was presented that defendant physically abused child, but failure to obtain medical attention was sufficient to sustain conviction); State v. Valley, 571 A.2d 579, 580, 585 (Vt. 1989) (affirming conviction for manslaughter when evidence was presented that defendant actually abused child, but conviction was based on failure to call for medical attention); Funkhouser v. State, 763 P.2d 695, 696 (Okla. Crim. App. 1988) (upholding second-degree manslaughter conviction when defendant, a member of Church of the New Born, treated infant son's pneumonia with prayer, resulting in death); Kohler v. State, 713 S.W.2d 141, 143 (Tex. Crim. App. 1986) (upholding murder conviction for parent who failed to take child to regular medical appointments, resulting in child's death by malnutrition); Commonwealth v. Barnhart, 497 A.2d 616, 620, 630 (Pa. Super. Ct. 1985) (affirming conviction for defendant, a member of Faith Tabernacle Church, who treated two-year-old son's tumor with prayer, resulting in death); Bergmann v. State, 486 N.E.2d 653, 655-56 (Ind. Ct. App. 1985) (affirming reckless homicide conviction for defendant who treated infant daughter's meningitis with prayer, instead of with medicine, resulting in her death); *Sealy*, 356 N.W.2d 615 (affirming involuntary manslaughter conviction for defendant who failed to treat infant's pneumonia); Robey v. State, 456 A.2d 953, 954 (Md. Ct. Spec. App. 1983) (upholding conviction for involuntary manslaughter when defendant could not be found guilty of active abuse because it occurred during period of insanity, but defendant failed to obtain medical attention for injured child during subsequent period of lucidity); State v. Mapp, 264 S.E.2d 348, 353-54 (N.C. Ct. App. 1980) (affirming second-degree murder conviction, for which state presented evidence that defendant caused blood clot by active abuse, but court found conviction could be upheld solely on defendant's failure to obtain medical care when child subsequently began to choke on blood clot, which caused death); Faunteroy v. United States, 413 A.2d 1294, 1295-96 (D.C. 1980) (affirming involuntary manslaughter conviction for parent who failed to seek medical attention for undernourished infant, who died); State v. Rupp, 586 P.2d 1302, 1305-06, 1313 (Ariz. Ct. App. 1978) (affirming involuntary manslaughter conviction for parents who took child to doctor but failed to mention digestive issues, which ultimately led to child's starvation death); People v. Henson, 304 N.E.2d 358, 358-59, 364 (N.Y. 1973) (affirming conviction for parents who allowed sick child to die over the course of days, without seeking medical attention); Stehr v. State, 139 N.W. 676, 676-77 (Neb. 1913) (upholding manslaughter conviction for parent's failure to treat child's frostbitten feet, as even though the father could not afford treatment and attempted to go to a doctor, the court held that the father had a duty to contact public authorities, and failure to do so constituted criminal negligence); State v. Sandford, 59 A. 597, 598, 601 (Me. 1905) (reversing manslaughter conviction on jury instruction error, but otherwise affirming the possibility, under Maine law, of a manslaughter-liability conviction of religious-sect leader who exercised parental-type control over members and allowed teenage follower to die of diphtheria when defendant insisted on treatment with prayer, rather than with medicine); Amy Yurkanin, *He Was Stationed in Florida when His Child Died, but Alabama Put Him in Prison Anyway*, AL.COM (May 22, 2022, at 06:56 ET), https://www.al.com/news/2022/05/he-was-stationed-in-florida-when-his-

selected from these jurisdictions, defendants—like the Crumbley parents—were not convicted based on any positive act that caused the condition requiring medical attention.[124] As with James and Jennifer Crumbley, liability lay in these defendants' failure to appropriately respond to clear signs indicating a child in their care needed help.[125]

State high courts have been affirming manslaughter convictions based on an omission of parental or caretaker duty via medical neglect for over 110 years, including cases involving parents arguably more sympathetic than the Crumbleys. In its 1913 decision *Stehr v. State*, the Nebraska Supreme Court upheld a stepfather's manslaughter conviction in a poignant example of the wide reach of parental and caretaker duty, including homicide liability for failure to act.[126]

Henry Stehr was a German immigrant and day laborer, living in Norfolk, Nebraska.[127] Stehr left Hamburg, Germany, for the United States in 1910, and his wife, their infant child, and a three-year-old stepson named Kaurt later followed.[128] Stehr had no source of income or wealth other than his and his wife's daily wages, which

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child-died-but-alabama-put-him-in-prison-anyway.html [https://perma.cc/UM6R-TD9T] (describing Robert Rice's Alabama manslaughter conviction after daughter's death from malnourishment and medical neglect while Rice was on military deployment and Rice's wife was suffering from a brain tumor); Tony Keith, *Stepmom Pleads Guilty for 11-Year-Old's 'Forced Water Intoxication' Death in El Paso County*, CBS KKTV NEWS (Aug. 10, 2022, at 07:10 ET), https://www.kktv.com/2022/08/09/stepmom-pleads-guilty-11-year-olds-forced-water-intoxication-death-el-paso-county/ [https://perma.cc/BD2R-TR8F] (describing Tara Sabin's Colorado conviction for negligent homicide after her stepson died from forced water intoxication); *Vegan Mom Gets Life in Prison for Starvation Death of Son*, AP NEWS (Aug. 29, 2022, at 16:09 ET), https://apnews.com/article/health-crime-florida-sentencing-cb79b4b47da608f42c6f8f7a94396e5b [https://perma.cc/VND2-3GRK] (describing Sheila O'Leary's Florida murder conviction for failing to provide medical care for malnourished son, whom she fed a strict vegan diet); *see also* State v. Watson, 71 A. 1113, 1113 (N.J. 1909) (reversing involuntary manslaughter conviction but discussing elements for involuntary manslaughter conviction based on medical neglect under New Jersey law).

124. *See* People v. Crumbley, 11 N.W.3d 576, 592-94 (Mich. Ct. App. 2023); *supra* note 123 and accompanying text.

125. *See Crumbley*, 11 N.W.3d at 592-94; *supra* note 123.

126. *See* 139 N.W. at 676, 679.

127. *Id.* at 676-77.

128. *Id.* at 677.

provided meager means for his family.[129] Stehr's command of the English language was limited.[130]

On New Year's Eve, 1910, a severe snowstorm with chilling temperatures impacted Stehr's community.[131] That evening, the fire went out in Stehr's home.[132] Snow and frost crept into young Kaurt's bedroom through cracks in his door and through a broken window pane.[133] To make matters worse, Kaurt had wet the bed.[134] As a result, Kaurt's bedding had become stiff and cold, and he became especially vulnerable to frostbite.[135] Over the next five days, Stehr's wife noticed that Kaurt's feet had become frostbitten, turning gray and green.[136] Stehr treated the frostbite by applying "hot water and ... cloths saturated with vaseline" to Kaurt's feet.[137] Stehr did not seek out a doctor for two weeks, at which point Kaurt's "feet were so badly decomposed that the stench arising therefrom had become unbearable."[138]

Stehr then approached two different doctors, both of whom refused to treat Kaurt because of Stehr's inability to pay.[139] One of the doctors recommended that Stehr notify the city's public physician about the situation.[140] The next day, the city physician contacted Stehr and, seeing the severity of Kaurt's frostbite, decided "amputation was absolutely necessary."[141] Stehr could not afford the procedure, but a philanthropically inclined county commissioner arranged for the amputation and for the provision of necessary supplies.[142] Despite the amputation, Kaurt suffered from sepsis and

129. *Id.*
130. *See id.* ("It is contended that the defendant is ... unable to speak the language of this country.").
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.*

succumbed to his injuries, dying three weeks after he contracted the frostbite on his feet.[143]

Stehr was charged with murder, but was ultimately convicted of manslaughter based on negligently causing Kaurt's death by failing to secure medical aid.[144] In affirming Stehr's conviction, the Nebraska Supreme Court found that the jury was presented sufficient evidence to find that Stehr was criminally negligent in failing to procure medical treatment over a period of ten days, during which Kaurt's feet were clearly getting worse.[145]

Interestingly, the Nebraska Supreme Court acknowledged that Stehr was without the financial means to pay for any form of medical treatment for Kaurt and had, in fact, attempted to secure physician assistance earlier but was turned away.[146] Nevertheless, the court held that Stehr's inability to pay for treatment did not excuse his failure to arrange for it.[147] The court held that Stehr could and should have appealed to public authorities, given Kaurt's dire situation and Stehr's financial straits, and that the failure to do so constituted a criminally negligent departure from a duty of care.[148] Even if Stehr, a German immigrant with limited command of the English language, was unaware that "poor laws" existed, which might have provided relief, his failure to seek out assistance from public officials constituted the requisite criminal negligence for manslaughter.[149]

*Stehr* is a telling example of both the extent and the long American history of homicide liability for breaching the parental

143. *Id.*

144. *Id.* at 677-78.

145. *See id.* at 677 ("The evidence shows ... for 10 or 11 days he saw the child's feet turn from gray to purple, from blue to green and black, and saw its flesh rotting and dropping away, yet made no effort to procure medical aid until the odor of the rotting flesh became unbearable.").

146. *See id.*

147. *See id.*

148. *See id.* at 678 ("In such a case, where the party charged is unable to supply the necessary succor, he ceases to be responsible, but this responsibility is not divested in case[s] where poor laws exist. In such case the person owing the duty should report the case to the public authorities for their relief.").

149. *See id.* ("[I]gnorance of the laws providing for the care of poor persons would not excuse defendant from the omission of his duty to procure the necessary medical attention for the deceased child.").

duty by medical neglect.[150] *Stehr* is also an example of the breadth of parental duty and the extent of homicide liability for acts of omission breaching that duty. At least in Nebraska, even a parent who is denied medical care for his child might still be liable for failing to take advantage of other methods of procuring care, despite language and cultural barriers that prevent him from knowing those resources exist.

Fifteen other jurisdictions' appellate courts have affirmed manslaughter convictions arising out of parental failure to secure medical treatment for ill children.[151] Two more state appellate courts—New Jersey's and Maine's—dismissed manslaughter convictions for medical neglect but discussed that the State recognizes homicide liability for medical neglect in other circumstances.[152] Two more states—Alabama and Colorado—have convicted parents of manslaughter or negligent homicide for failing to provide adequate

150. American homicide liability by medical neglect predates the invention of penicillin. *Compare id.* (decided in 1913), *with* John Horgan, *Discovery of Penicillin*, WORLD HIST. ENCYC. (June 20, 2024), https://www.worldhistory.org/article/2490/discovery-of-penicillin/ [https://perma.cc/Y6EN-EYLS] (stating that penicillin was discovered in 1928).

151. *See* State v. Hussing, No. 97972, 2012 WL 5292878, at *1 (Ohio Ct. App. Oct. 25, 2012) (involuntary manslaughter); State v. Arends, No. 03-0420, 686 N.W.2d 265, 2004 WL 1159730, at *1 (Iowa Ct. App. 2004) (involuntary manslaughter); State v. Martinez, 68 P.3d 606, 612 (Haw. 2003) (manslaughter); Jones v. State, 678 So. 2d 707, 710-11 (Miss. 1996) (manslaughter); Commonwealth v. Twitchell, 617 N.E.2d 609, 612 (Mass. 1993) (involuntary manslaughter); State v. Norman, 808 P.2d 1159, 1160-61 (Wash. Ct. App. 1991) (first-degree manslaughter); State v. Cacchiotti, 568 A.2d 1026, 1026, 1030-31 (R.I. 1990) (involuntary manslaughter); State v. Valley, 571 A.2d 579, 580, 585 (Vt. 1989) (manslaughter); Funkhouser v. State, 763 P.2d 695, 696 (Okla. Crim. App. 1988) (second-degree manslaughter); Commonwealth v. Barnhart, 497 A.2d 616, 620, 630 (Pa. Super. Ct. 1985) (manslaughter); People v. Sealy, 356 N.W.2d 614, 615 (Mich. Ct. App. 1984) (involuntary manslaughter); Robey v. State, 456 A.2d 953, 954 (Md. Ct. Spec. App. 1983) (involuntary manslaughter); Faunteroy v. United States, 413 A.2d 1294, 1295-96 (D.C. 1980) (involuntary manslaughter); State v. Rupp, 586 P.2d 1302, 1305-06, 1313 (Ariz. Ct. App. 1978) (involuntary manslaughter). Some states define this offense as "negligent homicide." *See, e.g.*, State v. Beagley, 305 P.2d 147, 149 (Or. Ct. App. 2013) (criminally negligent homicide); People v. Henson, 304 N.E.2d 358, 359 (N.Y. 1973) (negligent homicide).

152. *See* State v. Watson, 71 A. 1113 (N.J. 1909) (dismissing conviction for involuntary manslaughter based on medical neglect by reliance on faith healing, but discussing long-standing liability for failing to provide medical attention to children); State v. Sandford, 59 A. 597, 598, 601 (Me. 1905) (dismissing manslaughter conviction of religious leader, who exercised parent-like control over followers and refused to provide medical attention for teenager with diphtheria, based on improper jury instruction, but acknowledging that caretaker responsibility can result in homicide liability).

medical care for their children, but the convictions are too recent for complete appellate review.[153]

Typical examples of parental homicide by medical neglect might fall into two categories, which this Article separates into *faith healing* and *traditional medical neglect*, respectively. Each method of parental homicide by medical neglect draws a direct comparison to James and Jennifer Crumbley's liability. Homicide by faith healing involves the intentional choice to rely on prayer or other faith-based methods to combat illness, while traditional medical neglect involves a parent simply neglecting to treat an obvious, life-threatening condition.

*1. Faith Healing*

Parents commit homicide by faith healing when they are presented with a child's life-threatening medical condition and, based upon a genuinely held religious belief, refuse to seek out or apply traditional medicine.[154] In *State v. Norman*, the Washington Court of Appeals upheld manslaughter convictions for parents who intentionally treated their young child's diabetes with prayer rather than insulin.[155] In *Funkhouser v. State*, the Oklahoma Court of Criminal Appeals affirmed a member of the Church of the New Born's manslaughter conviction for treating their three-month-old son's pneumonia with prayer instead of traditional medicine.[156] The Pennsylvania Superior Court, in *Commonwealth v. Barnhart*, affirmed the manslaughter convictions of two parents, both members of the Faith Tabernacle Church, for treating their two-year-old son's curable Wilms' tumor with prayer instead of modern medicine.[157] The Oregon Court of Appeals upheld convictions for criminally

153. *See, e.g.*, Yurkanin, *supra* note 123 (describing Robert Rice's Alabama manslaughter conviction for failing to properly treat daughter's malnourishment while he was out of state on military orders); Keith, *supra* note 123 (describing Tara Sabin's Colorado conviction for negligent homicide after her stepson died from forced water intoxication).

154. *See, e.g.*, State v. Neumann, 2013 WI App 58, ¶¶ 11-29, 348 Wis. 2d 455, 832 N.W.2d 560 (describing how parents' decision to treat eleven-year-old's diabetes with prayer instead of insulin led to her death).

155. *See* 808 P.2d 1159, 1160-61 (Wash. Ct. App. 1991).

156. *See* 763 P.2d 695, 696 (Okla. Crim. App. 1988).

157. *See* 497 A.2d 616, 620, 630 (Pa. Super. Ct. 1985).

negligent homicide in *State v. Beagley*, in which parents caused their son's death by treating his kidney disorder with prayer.[158]

Faith healing cases demonstrate parental homicide liability for intentionally disregarding widely recognized and effective medical treatments, to a child's detriment. To the degree that the Crumbleys ignored Ethan's deteriorating mental state because of their own misguided beliefs about what was causing his behavior or their doubts about the efficacy of mental health treatment,[159] their conduct and liability align with those of the faith healing parent. Just as parents who kill by faith healing intentionally refuse available traditional medical treatment for their children, the Crumbleys intentionally disregarded Ethan's warning signs and pleas for help and refused to seek out traditional mental health treatment, despite knowing his symptoms.[160]

*2. Traditional Medical Neglect*

Parental homicide by traditional medical neglect will typically involve parents, such as Henry Stehr,[161] who observe a child's life-threatening injury or illness and simply fail to seek out timely medical attention for whatever reason, resulting in the child's death.[162] Most homicide convictions for medical neglect fall within this category: parents who did not exercise due care in treating a child's life-threatening illness.[163] If we view the Crumbleys as simply ignoring or failing to notice the seriousness of Ethan's condition and its associated risks, then their conduct fits neatly within the established theory of liability for traditional medical neglect.[164]

158. *See* 305 P.3d 147, 149-50, 155 (Or. Ct. App. 2013).

159. There is some evidence that the Crumbleys were providing Ethan medication that they felt was more appropriate than traditional mental health treatment. For example, James and Jennifer's text message exchanges and Ethan's texts to his friend describe the Crumbleys' medicating Ethan with Xanax, melatonin, and other "pills," as well as treating his condition by insisting that he "go to work and work hard and not complain ... [and] 'suck it up.'" People v. Crumbley, 11 N.W.3d 576, 581 (Mich. Ct. App. 2023).

160. *See id.* at 592-93.

161. *See* Stehr v. State, 139 N.W. 676, 678 (Neb. 1913).

162. *See, e.g.*, Faunteroy v. United States, 413 A.2d 1294, 1295-96, 1300-01 (D.C. 1980) (affirming involuntary manslaughter conviction for parent who failed to seek medical attention for clearly undernourished infant, resulting in death).

163. *See supra* note 123.

164. *Cf. supra* note 124.

Take the following example from *People v. Henson*, in which the New York Court of Appeals upheld a parent's negligent homicide conviction.[165] The day before their four-year-old son Kip's death, Michael and Marlene Henson told his babysitter to "ignore" Kip's symptoms because he might be "pesty" and he "had a cold that week."[166] While the Hensons were out drinking, the babysitter observed Kip's condition worsening: "[H]e began 'breathing very hard, real hard,' and a 'red' substance began drooling out of his mouth."[167] When the Hensons returned home, the babysitter attempted to impress the seriousness of the situation upon them, explaining Kip's symptoms and that he "seemed awful sick."[168] The Hensons were visibly intoxicated and "paid little attention" to the babysitter's urgent warnings, instead trying to change the subject.[169] The Hensons made no attempt to secure medical attention for Kip, who died of acute pneumonia the next day.[170]

Like the Hensons, the Crumbleys were confronted by clear evidence that their son was slipping into a life-threatening mental state.[171] Like the Hensons, they chose to minimize or ignore Ethan's symptoms and pleas for help.[172] Both sets of parents were confronted by third parties—the Hensons by their babysitter and the Crumbleys by Oxford High School officials—who attempted to impart the seriousness of the situation upon them.[173] The Crumbleys, like the Hensons, appear from the record to have cared more about their own lives—work or leisure events that took priority over responding to Ethan's cries for help—than about the growing risk to a child's life.[174]

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165. *See* 304 N.E.2d 358 (N.Y. 1973).
166. *Id.* at 361.
167. *Id.*
168. *Id.*
169. *Id.*
170. *Id.* at 361-62.
171. *See* People v. Crumbley, 11 N.W.3d 576, 592-93 (Mich. Ct. App. 2023).
172. *See id.* at 593.
173. *See Henson*, 304 N.E.2d at 361; *Crumbley*, 11 N.W.3d at 586.
174. As a reminder, evidence was presented that the Crumbleys failed to respond to Ethan's text messages asking for help because they were horseback riding. *Crumbley*, 11 N.W.3d at 580. Both parents ultimately chose not to remove Ethan from school after they were confronted by school officials because they felt they needed to go back to work, despite later evidence that they could have taken personal time. *Id.* at 586 n.8.

*3. Medical Neglect Homicide Liability*

Nine additional jurisdictions' appeals courts have upheld or otherwise approved murder convictions for parents whose children died of medical neglect.[175] Murder typically requires a higher degree of mens rea—that of intentional, knowing, or reckless killing—and carries a higher degree of culpability and stiffer punishments.[176]

Of those murder convictions upheld on appeal, three were for first-degree intentional murder.[177] Two states have convicted defendants of felony murder, with an underlying felony involving child neglect or abuse.[178] The Missouri Court of Appeals upheld a felony-murder conviction for killing by medical neglect in *State v. Rinehart*,[179] while the Georgia Court of Appeals reversed and ordered a retrial based on an erroneous jury instruction in *Landell v. State*.[180] *Rinehart* involved a defendant who had multiple children with his own daughter, and allowed one to die of a respiratory illness treated with over-the-counter medication rather than seeking medical attention.[181] *Landell* was a faith-healing case in which a defendant-father refused to seek assistance for his malnourished infant son who would not feed, praying for milk production instead of seeking assistance or medical care.[182] The remaining four

175. *See* State v. Lutz, 2017-0425, p. 2 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1114, 1117 (second-degree murder); People v. Pollard, 2015 IL App (3d) 130467, ¶¶ 1-3, 33 N.E.3d 975, 976 (first-degree murder); United States v. Christie, 717 F.3d 1156 (10th Cir. 2013) (second-degree murder); People v. Latham, 137 Cal. Rptr. 3d 443, 444-45 (Cal. Ct. App. 2012) (second-degree murder); State v. Rinehart, 383 S.W.3d 95, 97-98 (Mo. Ct. App. 2012) (felony murder); Commonwealth v. Robidoux, 877 N.E.2d 232, 236, 238-39 (Mass. 2007) (first-degree murder); Kohler v. State, 713 S.W.2d 141, 142 (Tex. Crim. App. 1986) (murder); State v. Mapp, 264 S.E.2d 348, 352-53 (N.C. Ct. App. 1980) (second-degree murder); *see also* Landell v. State, 850 S.E.2d 419, 420 (Ga. Ct. App. 2020) (reversing felony-murder conviction on faulty-jury-instruction grounds but holding that evidence was sufficient to support guilty verdict).

176. *See, e.g.*, MODEL PENAL CODE § 210.2 (A.L.I. 1985) (describing murder as requiring purpose, knowledge, or recklessness manifesting extreme indifference to the value of human life).

177. *See Pollard*, 33 N.E.3d at 976; *Robidoux*, 877 N.E.2d at 236; *Kohler*, 713 S.W.2d at 142.

178. *See Landell*, 850 S.E.2d at 420, 424; *Rinehart*, 383 S.W.3d at 97-98.

179. *See* 383 S.W.3d at 97-98.

180. *See* 850 S.E.2d at 420.

181. *See* 383 S.W.3d at 98-99.

182. *See* 850 S.E.2d at 421.

jurisdictions have affirmed murder convictions on appeal for some form of second-degree murder.[183]

One additional state, Utah, has convicted a parent under a theory of criminal liability specifically encompassing child abuse homicide.[184] Four more states' courts have upheld convictions based on elements typically associated with voluntary manslaughter or second-degree murder,[185] but have titled the statutory violation "reckless homicide."[186] Additionally, Florida prosecutors recently convicted a mother of first-degree murder for killing her child by medical neglect, but the case is too recent for completed appellate review.[187] Murder convictions based on medical neglect fall into both categories of faith healing and traditional medical neglect.[188]

*Commonwealth v. Robidoux* and *State v. Weems* exemplify murder or voluntary manslaughter convictions for both faith healing and traditional medical neglect, respectively.[189] In *Weems*, the Supreme

183. *See* State v. Lutz, 2017-0425 (La. App. 1 Cir. 11/1/17), 235 So. 3d 1114 (second-degree murder); United States v. Christie, 717 F.3d 1156 (10th Cir. 2013) (second-degree murder); People v. Latham, 137 Cal. Rptr. 3d 443 (Cal. Ct. App. 2012) (second-degree murder); State v. Mapp, 264 S.E.2d 348, 352-53 (N.C. Ct. App. 1980) (second-degree murder); *see also* State v. Burris, 544 P.3d 841 (Kan. 2024) (second-degree reckless murder for medical neglect of disabled spouse).

184. *See* State v. Goff, 2016 UT App 7, ¶ 1, 366 P.3d 413 (per curiam).

185. Whether a reckless killing constitutes manslaughter or second-degree murder (depraved-heart variation) depends on the degree of negligence and whether it manifests in extreme indifference to human life. *Compare* MODEL PENAL CODE § 210.2(1)(b) (A.L.I. 1985), *with id.* § 210.3(1)(a).

186. *See* State v. Weems, 619 S.W.3d 208, 210 (Tenn. 2021) (reckless homicide); State v. Neumann, 2013 WI App 58, ¶ 1, 832 N.W.2d 560 (Wis. 2013) (second-degree reckless homicide); Lucas v. Commonwealth, No. 2009-CA-000159-MR, 2012 WL 2360112, at *1 (Ky. Ct. App. June 22, 2012) (reckless homicide); Bergmann v. State, 486 N.E.2d 653, 655 (Ind. Ct. App. 1985) (reckless homicide).

187. *See Vegan Mom Gets Life in Prison for Starvation Death of Son*, *supra* note 123.

188. *See, e.g.*, Commonwealth v. Robidoux, 877 N.E.2d 232 (Mass. 2007) (first-degree murder for faith healing); *Latham*, 137 Cal. Rptr. 3d 443 (second-degree murder for traditional medical neglect). In addition to the thirty-five jurisdictions that have convicted parents for homicide by medical neglect, two more have sustained homicide convictions for defendants who failed to provide lifesaving medical care to a dependent spouse. *See* State v. Burris, 544 P.3d 841, 844-45 (Kan. 2024); State v. Mally, 366 P.2d 868, 869, 874 (Mont. 1961). The spouse cases both rest their holdings on analogy to parental duty: In both cases the victim spouse's illness left them in a position of dependency comparable to a child's dependence upon a parent. *See Burris*, 544 P.3d at 844-45 (spouse convicted of second-degree murder for failing to provide care for husband with dementia, resulting in his death); *Mally*, 366 P.2d at 869, 874 (spouse convicted of involuntary manslaughter for failing to provide medical care to sick wife, resulting in her death).

189. *See Robidoux*, 877 N.E.2d at 236; *Weems*, 619 S.W.3d at 210.

Court of Tennessee considered a case in which a mother was convicted of reckless homicide after her six-month-old daughter, Kar'mn, died of dehydration and malnutrition.[190] Weems was a nineteen-year-old mother of three.[191] She had taken Kar'mn to regularly scheduled doctor's visits in the months leading up to her death, and sought help from a pediatrician after initially struggling to properly mix Kar'mn's formula.[192] In response to police questioning after Kar'mn's death, Weems was adamant that she had fed Kar'mn sufficiently.[193] Kar'mn's daycare owner, however, testified that she had warned Weems that Kar'mn was not receiving a proper balance of sustenance.[194] Three or four days prior to Kar'mn's death, her daycare refused to accept her because she appeared ill.[195]

The Supreme Court of Tennessee acknowledged the moral difficulty of convicting a teenage mother struggling to provide care as best she could.[196] Nevertheless, the court found the jury could have reasonably determined that Weems culpably failed to adequately feed Kar'mn.[197] *Weems* typifies a homicide conviction incurring liability beyond involuntary manslaughter for traditional medical

190. *See* 619 S.W.3d at 210.

191. *Id.* at 211.

192. *Id.* at 212.

193. *Id.* at 212-14.

194. *Id.* at 215.

195. *Id.*

196. *See id.* at 221. ("This case paints a troubling and contrasted picture. On one hand, Ms. Weems, a teenage mother of three, appeared to provide for Kar'mn by taking her to all scheduled doctor appointments and bringing her to the emergency room when she had an unexpected illness. Additionally, at least two witnesses testified that both Ms. Weems and Kar'mn were sick in the days leading up to Kar'mn's death and that Kar'mn had a history of spitting up after feeding. Over the course of the investigation, Ms. Weems was adamant that she fed Kar'mn regularly up until the time she put Kar'mn to bed on March 2, 2005. On the other hand, Dr. Hawes' autopsy investigation uncovered multiple indicators that Kar'mn suffered from chronic malnutrition and severe dehydration, including the unsettling discovery that Kar'mn had almost no food or waste in her gastrointestinal tract, meaning she had been without food or liquids for a twenty-four-hour period or more. Moreover, the daycare provider had to address Ms. Weems for not bringing sufficient food for Kar'mn, and Ms. Weems admitted to medical professionals that she watered down formula with her previous child to make it last longer.").

197. *See id.* at 223. The state appealed the trial court's order granting Weems's motion for acquittal on the charge of aggravated child neglect after the jury convicted; Weems did not appeal her conviction for reckless homicide. *See id.* at 209, 210 n.5. The court reinstated her conviction for aggravated child neglect. *See id.* at 224. However, the facts establishing her culpability for child neglect established her culpability for Kar'mn's death and her conviction for reckless homicide. *See id.*

neglect, and also joins *Stehr* as an example of convicted defendants whom a reasonable observer might find more sympathetic than James and Jennifer Crumbley.

*Commonwealth v. Robidoux* is a similar case of homicide by malnutrition, though involving a perhaps less sympathetic defendant who killed by faith healing.[198] Robidoux and his wife restricted their ten-month-old son, Samuel, to a diet of water and breast milk pursuant to a purported divine revelation.[199] After the first day of feeding Samuel in accordance with Robidoux's message from God, Samuel began to display signs of malnutrition.[200] Even Robidoux felt doubt and began supplementing Samuel's diet with almond milk until he was admonished in a subsequent revelation.[201] As Samuel's condition sharply deteriorated, Robidoux called a family religious meeting rather than seeking medical attention.[202] The morning after the meeting, Samuel died, and Robidoux buried his body in a small plywood box in Baxter State Park in Maine.[203] Robidoux's first-degree murder conviction was affirmed by the Supreme Judicial Court of Massachusetts over his appeal based on his competency to stand trial and insanity defense.[204]

One might think a parent's greatest exposure in failing a duty to their child is culpability via a state law prohibiting child neglect or abuse, but cases of homicide by medical neglect dictate otherwise. Homicide liability for an omission of parental duty has been a mainstay in the majority of states for over a century.[205] Parents who kill their children through medical neglect, whether intentional or negligent, have consistently faced liability under state homicide statutes, not just child neglect, endangerment, or abuse statutes.[206]

The Crumbley conviction resembles prior homicide-by-medical-neglect cases, in part, because it *is* a case of parental medical neglect.[207] One strong piece of evidence against James and Jennifer

198. *See* 877 N.E.2d 232, 236 (Mass. 2007).
199. *Id.*
200. *Id.* at 238.
201. *Id.*
202. *Id.* at 238-39.
203. *Id.* at 239.
204. *See id.* at 239-40, 244, 248-49.
205. *See supra* notes 175-88 and accompanying text.
206. *See supra* notes 175-88 and accompanying text.
207. Of course, James and Jennifer Crumbley did not kill *Ethan* by medical neglect.

Crumbley was their failure to recognize and treat Ethan's deteriorating mental state.[208] The Crumbley parents' convictions may fail to shock those who consider that (1) part of their breach of parental duty—which caused foreseeable deaths—was their refusal to procure medical attention for Ethan;[209] and that (2) parents in nearly every state have been convicted of homicide for failure to obtain medical care for their children for over one hundred years.[210]

### *B. Passive Abuse: Homicide by Failing to Prevent Third-Party Killing*

Homicide by passive abuse occurs when a parent knows or should know a child is being abused, fails to protect that child from their abuser, and the child dies as a result.[211] Passive abusers fall into two categories, which this Article dubs *unknown abuser* and *true passive abuser*. *Unknown abuser* convictions involve instances in which a court cannot determine which of two parents or caretakers inflicted a lethal injury.[212] The *unknown abuser* cases cited in this Article involve only those instances in which the defendant-parents' liability is based on the court's finding that, even if they did not inflict physical abuse, they observed and failed to intervene while another did inflict physical abuse.[213] *True passive abuser* cases, meanwhile, involve positive evidence that a defendant-parent did not actively abuse a child but failed to protect that child from an abusive third party, typically a spouse or partner.

Both types of passive abuse involve parents whose partner, spouse, or coparent are known abusers. This Article is not a treatise on passive abuse, domestic violence, or feminist theories of

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Rather, their neglect caused the deaths of third parties. *See infra* Part II.C.

208. *See* People v. Crumbley, 11 N.W.3d 576, 592-93 (Mich. Ct. App. 2023).

209. *See id.*

210. *See supra* notes 175-88 and accompanying text.

211. *See* Bryan A. Liang & Wendy L. Macfarlane, *Murder by Omission: Child Abuse and the Passive Parent*, 36 HARV. J. ON LEGIS. 397, 398-401 (1999) (discussing murder by passive abuse under aiding and abetting theory of liability).

212. *See, e.g.*, State v. Smith, 597 S.E.2d 888, 894 (S.C. Ct. App. 2004) (affirming homicide-by-child-abuse conviction of defendant and child's mother, who were the only two adults in physical proximity to victim at time of death, meaning whoever did not inflict fatal physical abuse observed the other doing so and failed to intervene).

213. *See, e.g.*, *id.*

punishment.[214] But many instances of passive abuse involve a female spouse who is also being abused by the third-party male who ultimately kills their child.[215] Whether these defendants who suffer abuse themselves *should* be charged, tried, and convicted for murder or manslaughter is beyond the scope of this Article. The main thrust of this Subpart is that (1) there is longstanding and widespread precedent for finding a parent guilty of homicide for their failure to prevent and control the criminal acts of a third party, (2) the causal connection between the Crumbleys' failures and the Oxford High School shooting is at least as strong as that between many passive abusers and a child victim's ultimate death, and (3) parental homicide convictions for passive abusers involve criminal conduct that a reasonable observer may find less culpable or blameworthy than the Crumbleys'.

In many ways, James and Jennifer Crumbley's criminal behavior closely tracks that of the passive abuser. The Crumbleys were found liable for causing the deaths at Oxford High School, despite Ethan's intervening criminal act and the fact that they were not present at the time of the killings, because his actions were foreseeable and within their power to prevent.[216] Passive abuse cases stand for the proposition that homicide liability can attach for acts of omission in which a third party actually delivers a killing blow, or even the entirety of the physical violence. Like parents who should know a third party poses a risk to their children and unreasonably fail to intervene, the Crumbleys should have known Ethan posed a risk to others and declined to act.

At least twenty-eight states have affirmed a conviction for homicide by a passive abuser on appellate review.[217] Seven

214. For an in-depth discussion on sexism in the criminal justice system regarding prosecuting mothers for harming children, see generally Dorothy E. Roberts, *Motherhood and Crime*, 79 IOWA L. REV. 95 (1993).

215. *See, e.g.*, Mott v. Stewart, No. 98-CV-239, 2002 WL 31017646, at *1-2 (D. Ariz. Aug. 30, 2002) (granting habeas relief based on trial court's failure to permit girlfriend to introduce evidence that she was also abused during her trial for homicide by passive abuse).

216. People v. Crumbley, 11 N.W.3d 576, 593-95 (Mich. Ct. App. 2023).

217. *See* Key v. State, No. 23A-CR-1754U, 226 N.E.3d 229U, 2023 WL 8524286U (Ind. Ct. App. 2023) (unpublished table decision) (affirming conviction for neglect causing death when defendant failed to protect child from boyfriend who killed the child); People v. Worth-McBride, 963 N.W.2d 595 (Mich. 2021) (affirming second-degree murder conviction for mother who failed to protect child from father); State v. Prince, No. E2019-02058-CCA-R3-CD, 2021 WL 4316838 (Tenn. Crim. App. Sep. 23, 2021) (affirming first-degree felony-murder conviction

for defendant who left seventeen-month-old child with abusive boyfriend, who killed the child while defendant was out getting groceries); Carson v. State, 422 S.W.3d 733 (Tex. Ct. App. 2013) (affirming capital murder conviction for wife who allowed husband to perform exorcism on young daughter, killing her); State v. Houston, 2013-493 (La. App. 3 Cir. 11/6/13), No. KA 13-493, 2013 WL 5951506 (upholding mother's manslaughter conviction for failing to protect child from boyfriend's beatings); People v. Lewie, 953 N.E.2d 760 (N.Y. 2011) (affirming second-degree manslaughter conviction for mother who repeatedly left child with boyfriend over three-week period, knowing child was being abused); Perez v. State, No. 53114, 373 P.3d 950U, 2011 WL 4527520U (Nev. Sep. 29, 2011) (unpublished table decision) (affirming first-degree murder conviction for defendant who failed to intervene as her abusive boyfriend beat her child to death); Yellowbear v. State, 2008 WY 4, 174 P.3d 1270 (Wyo. 2008) (affirming felony-murder conviction based on accessory liability when it was unclear which parent physically abused child, causing death); State v. Lopez, 2007-NMSC-037, 142 N.M. 138, 164 P.3d 19 (upholding conviction for negligently permitting child abuse resulting in death or great bodily harm when mother was asleep while known-abuser husband killed child); State v. Edgar, 127 P.3d 1016 (Kan. 2006) (upholding conviction for first-degree felony-murder when mother, a member of a religious sect, tied misbehaving child up to die and defendant knew what mother was doing and failed to intervene); State v. Burrell, 160 S.W.3d 798 (Mo. 2005) (en banc) (affirming second-degree felony-murder conviction with underlying felony of child endangerment, for defendant who left child with abusive father); State v. Smith, 597 S.E.2d 888 (S.C. Ct. App. 2004) (affirming defendant's conviction when defendant and child's mother were the only adults with physical access to child at time of death, and state provided for homicide by omission through either parent's failing to prevent the other's physical abuse); State v. Bluff, 2002 UT 66, 52 P.3d 1210 (affirming felony-murder conviction, with child abuse as underlying felony, for mother whose young daughter died under her care after being restrained, whipped, and sexually abused by the mother's friend); State v. Berube, 107 Wash. App. 1035 (2001) (affirming homicide-by-child-abuse conviction, under accomplice-liability theory, for third party's abuse causing death of two-year-old son), *aff'd*, 79 P.3d 1144; Gilson v. State, 2000 OK CR 14, 8 P.3d 883 (Okla. Crim. App. 2000) (affirming first-degree-murder-by-child-abuse conviction for mother's boyfriend, who permitted abuse by mother, in which jury was split on issue of actual abuse, but passive abuse was sufficient to sustain conviction); Tharp v. Commonwealth, 40 S.W.3d 356 (Ky. 2000) (affirming wanton murder conviction for mother who failed to protect child from abusive husband); Efurd v. State, No. CACR98-142, 1999 WL 54800 (Ark. Ct. App. Feb. 3, 1999) (affirming murder conviction, based on accessory liability, for defendant's failing to intervene as husband beat nine-month-old baby to death); State v. Delgado, 707 A.2d 1 (Conn. 1998) (affirming first-degree manslaughter conviction of non-parent caretaker who failed to protect child from mother's abuse, resulting in death); State v. Mott, 931 P.2d 1046 (Ariz. 1997) (en banc) (affirming first-degree-murder conviction for mother who left child with abusive boyfriend, who killed child, and then did not take child to hospital immediately after arriving home to find child injured, although defendant was eventually granted habeas for trial court's error in prohibiting evidence of defendant's suffering abuse); State v. Long, No. 93-3235-CRU, 532 N.W.2d 468U, 1995 WL 121431U (Wis. Ct. App. Mar. 23, 1995) (unpublished table decision) (affirming first-degree intentional homicide conviction based on principal or, in the alternative, aider or abettor theory of liability when the evidence did not conclusively show which parent killed child, but both were present and neither sought immediate medical attention); People v. Stanciel, 606 N.E.2d 1201 (Ill. 1992) (consolidated appeal affirming murder convictions for mothers who failed to protect their children from abusive boyfriends, even though one defendant was not present during killings); State v. Cacchiotti, 568 A.2d 1026 (R.I. 1990) (affirming defendant's involuntary

more have convicted parents for passive-abuse homicide in cases that were not subject to appellate review.[218] Of those passive-abuse convictions affirmed on appeal, fourteen involve some form of manslaughter or other homicide liability short of murder.[219] The

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manslaughter conviction for failing to provide medical care to child while boyfriend beat child to death); State v. Morrison, 437 N.W.2d 422 (Minn. Ct. App. 1989) (affirming second-degree felony-murder conviction for mother's failing to protect child from abusive boyfriend); Johnson v. State, 508 So. 2d 443 (Fla. Dist. Ct. App. 1987) (per curium) (affirming manslaughter sentence of defendant who was initially charged with felony murder for failing to protect daughter from boyfriend's fatal beating); State v. Hoffman, 639 P.2d 507 (Mont. 1982) (affirming negligent homicide conviction for mother who failed to protect child from father, who beat child to death while she was at work); Commonwealth v. Howard, 402 A.2d 674 (Pa. Super. Ct. 1979) (affirming involuntary manslaughter conviction for mother who failed to protect child from boyfriend's fatal beating); State v. Zobel, 134 N.W.2d 101 (S.D. 1965) (affirming second-degree-manslaughter conviction for husband who knew his wife was brutally beating their children and failed to prevent her from killing two of them); Palmer v. State, 164 A.2d 467 (Md. App. Ct. 1960) (affirming involuntary manslaughter conviction for minor mother who permitted boyfriend to whip twenty-month-old to death).

218. *See* Taylor Lang, *Mother Sentenced to 25 Years in Prison for Murder of 18-month-old*, NBC WVTM 13 (July 8, 2024, at 11:51 CT), https://www.wvtm13.com/article/blount-county-murder-son-child-abuse/61534487 [https://perma.cc/QJ7W-SGXK] (describing Alabama conviction and sentencing of Samantha McCormack for felony murder by leaving her child in the care of known abuser); Elise Schmelzer, *Caden McWilliam's Mother Sentenced to 32 Years in Prison for Horrific Abuse that Led to 7-Year-Old's Death*, DENV. POST (Aug. 12, 2020, at 15:27 MT), https://www.denverpost.com/2020/08/12/caden-mcwilliams-death-mother-prison-sentence/ [https://perma.cc/TJA2-NAXD] (describing Elisha Pankey's thirty-two-year Colorado sentence for failing to protect her child from known abuser and then hiding the body after abuser killed her son); *Mother of Heaven Watkins Sentenced to 30 Years for 11-Year-Old's Death*, ABC 13NEWS NOW (Feb. 7, 2020, at 13:44 ET), https://www.13newsnow.com/article/news/local/mycity/norfolk/heaven-watkins-latoya-smith-sentencing/291-6ff0fe42-2331-4d58-9886-d7004cca287f [https://perma.cc/M9S8-633E] (describing Latoya Smith's Virginia felony-murder conviction for failing to prevent her child from dying at the hands of Smith's abusive boyfriend); *Mother, Partner Convicted in Beating Death of Girl*, AP NEWS (June 13, 2018, at 00:09 ET), https://apnews.com/article/----9ae5ed952d104011abf5dcc43c1c0412 [https://perma.cc/2T6A-DS72] (describing Tequila Crump's Ohio conviction for reckless homicide as a passive abuser); Press Release, Del. Dep't of Just., Woman Pleads Guilty in Death of Child (Jan. 12, 2018), https://news.delaware.gov/2018/01/12/whlr/ [https://perma.cc/GC2L-JW8W] (describing Casey Layton's conviction for murder by neglect based on passive-abuse legal liability after government could not determine whether Layton or her spouse inflicted physical wounds); Jennifer Sinco Kelleher, *Mom of Missing Hawaii Boy Pleads Guilty to Manslaughter*, AP NEWS (Dec. 1, 2016, at 21:53 ET), https://apnews.com/article/--b9c6c15bfb6d4675acc4b74014829619 [https://perma.cc/3FUU-YVNW] (describing Jaylin Kema's Hawaii manslaughter conviction as passive abuser for six-year-old's death when husband was abusing son); Anna Gorman, *Mother Admits Killing Toddler*, L.A. TIMES (Mar. 17, 2001, at 00:00 PT), https://www.latimes.com/archives/la-xpm-2001-mar-17-me-39033-story.html [https://perma.cc/67MV-4EQ5] (describing Gabriela Hernandez's voluntary manslaughter plea after she failed to intervene in abuse that resulted in the death of her daughter).

219. *See Key*, No. 23A-CR-1754, 226 N.E.3d 229, 2023 WL 8524286 (neglect causing death);

remaining fourteen involve some degree of murder, typically based on accomplice liability.[220] In total, all but sixteen states have convicted parents for failing to prevent a third party from killing a child. Four additional states have convicted defendants of assault, sexual assault, or felony injury based on passive-abuse liability for failing to prevent a third party from committing those offenses against a child.[221]

*State v. Burrell*, a 2005 Supreme Court of Missouri case involving a murder-by-passive-abuse conviction, is illustrative.[222] Brandy Burrell was convicted of murdering her two-year-old son, Isaiah.[223] Burrell and her boyfriend, Isaiah's father, were visiting Isaiah's grandmother when the father began attacking Isaiah.[224] The father kicked Isaiah several times, hard enough to send him flying, then slammed Isaiah's face into the floor and stepped on it.[225] Burrell said nothing during the incident and lied when Isaiah's great-aunt asked how he had become bruised.[226] When Burrell, Isaiah, and his father returned from the trip, Isaiah went to sleep and would not wake.[227] When they could not revive him, Burrell and Isaiah's father took Isaiah to the hospital but did not disclose the nature of his injuries.[228] Isaiah died shortly after midnight.[229]

The medical examiner discovered the injuries that caused Isaiah's death as well as older, healing injuries, indicating a history of

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*Worth-McBride*, 963 N.W.2d 595 (second-degree murder); *Houston*, No. KA13-493, 2013 WL 5951506 (manslaughter); *Lewie*, 953 N.E.2d 760 (second-degree manslaughter); *Lopez*, 164 P.3d 19 (negligently permitting child abuse resulting in death or great bodily harm); *Smith*, 597 S.E.2d 888 (homicide by child abuse); *Berube*, 107 Wash. App. 1035 (homicide by abuse); *Delgado*, 707 A.2d 1 (first-degree manslaughter); *Cacchiotti*, 568 A.2d 1026 (involuntary manslaughter); *Johnson*, 508 So. 2d 443 (manslaughter); *Hoffman*, 639 P.2d 507 (negligent homicide); *Howard*, 402 A.2d 674 (involuntary manslaughter); *Zobel*, 134 N.W.2d 101 (second-degree manslaughter); *Palmer*, 164 A.2d 467 (involuntary manslaughter).

220. *Compare supra* note 219, *with supra* note 217.

221. *See, e.g.*, State v. Fernando, 996 N.W.2d 630 (Neb. Ct. App. 2023) (intentional child abuse, sexual assault); State v. Peters, 780 P.2d 602 (Idaho Ct. App. 1989) (felony injury); State v. Walden, 293 S.E.2d 780 (N.C. 1982) (assault with a deadly weapon); Orrison v. State, 655 P.2d 782 (Alaska Ct. App. 1982) (desertion).

222. *See* 160 S.W.3d at 803.

223. *Id.* at 799.

224. *Id.*

225. *Id.* at 799-800.

226. *Id.* at 800.

227. *Id.*

228. *Id.*

229. *Id.*

abuse.[230] Evidence at trial showed that Burrell was aware that Isaiah's father had been abusing him for a year, and that continuing to put Isaiah in contact with his father created a substantial risk of harm, which was necessary to convict for felony child endangerment.[231] Because Isaiah was killed as a result, Burrell was also charged with, and found guilty of, felony murder, with child neglect as the underlying felony, based on her exposing Isaiah to a known abuser.[232] Burrell was convicted despite the fact that she was *also* physically abused by Isaiah's father.[233]

Burrell stood by and watched her son's ultimately deadly beating, but not all passive abusers are just an arm's length away from the lethal physical abuse. Like James and Jennifer Crumbley, passive abusers' homicide convictions have been sustained when the defendants were not physically present at the killings. Illinois, Tennessee, New York, Arizona, and Montana have sustained homicide convictions for parents who were not physically present when a third party killed their child.[234] Additionally, in *State v. Lopez*, the New Mexico Supreme Court upheld a defendant's homicide conviction even though the defendant had been asleep at the time of the killing.[235] That the Crumbleys incurred homicide liability for the killings at Oxford High School, despite not being present when they occurred, is not so surprising in the context of these passive-abuse convictions.[236]

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230. *Id.* at 800-01.

231. *See id.* at 802.

232. *See id.* at 803.

233. *See id.* at 801. As will be discussed in this Subpart, Burrell is far from the only passive abuser convicted of a homicide despite evidence that they were also subject to physical violence from the actor who delivered the fatal physical abuse of their child. *See infra* notes 258-59 and accompanying text.

234. *See, e.g.*, State v. Prince, No. E2019-02058-CCA-R3-CD, 2021 WL 4316838 (Tenn. Crim. App. Sep. 23, 2021) (affirming conviction of defendant out getting groceries at time of killing); People v. Lewie, 953 N.E.2d 760 (N.Y. 2011) (affirming conviction of defendant who left victim alone with abuser over a period of weeks); State v. Mott, 931 P.2d 1046 (Ariz. 1997) (en banc) (affirming conviction of defendant who left child alone with abuser); People v. Stanciel, 606 N.E.2d 1201 (Ill. 1992) (affirming conviction of defendant who was out drinking with her friend during killing); State v. Hoffman, 639 P.2d 507 (Mont. 1982) (affirming conviction of defendant who was at work during the killing).

235. *See* 2007-NMSC-037, ¶ 5, 142 N.M. 138, 141, 164 P.3d 19, 22.

236. A previously cited medical neglect case is relevant on this point. In *Robey v. State*, the Court of Special Appeals of Maryland affirmed a defendant mother's conviction when she was legally insane (and therefore not culpable) at the time of the beatings, but regained lucidity

For example, in *State v. Prince*, the Tennessee Court of Criminal Appeals upheld the first-degree felony-murder conviction of a defendant mother, Amanda Beaty, who was not present at the time her boyfriend, Rodger Prince, killed her seventeen-month-old son.[237] In convicting Beaty, Tennessee prosecutors introduced evidence that she knew her son was being abused from October 2013 through March 2014, before his death in June 2014.[238] The child's pediatrician and nurse practitioner testified that they observed bruising, broken bones, and severe trauma to the infant in the months leading up to his death.[239] When confronted about the injuries, Beaty offered that her other children had accidentally dropped her son and that he seemed to bruise easily, possibly as a result of a bleeding disorder.[240] Testing indicated the injuries were nonaccidental and ruled out a blood disorder.[241] Approximately three months after the last hospital visit, Beaty's boyfriend, Prince, ruptured the infant's aorta, resulting in his death by blood loss.[242]

Beaty was convicted based on evidence that she left her son in Prince's care to go grocery shopping, despite her knowledge that Prince was abusive.[243] Beaty permitted Prince to watch her son, despite both evidence of abuse and a no-contact order prohibiting contact between Prince and her children.[244] Beaty, along with Prince, was convicted of felony murder in the perpetration, or attempt to perpetrate, aggravated child abuse and child neglect.[245] Like James and Jennifer Crumbley, Amanda Beaty was not present at the time a child was killed but failed to take reasonable steps at her disposal to prevent foreseeable harm.

In *People v. Lewie*, the New York Court of Appeals affirmed Alicia Lewie's manslaughter conviction for leaving her eight-month-old son, Colbi, in her boyfriend Michael Flint's care for forty-five days, during which time Flint killed Colbi by repeated severe abuse,

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afterward and failed to call the police. *See* 456 A.2d 953, 954, 959 (Md. Ct. Spec. App. 1983).

237. *See* 2021 WL 4316838, at *16.

238. *See id.* at *1, *4.

239. *Id.* at *1-3.

240. *Id.* at *1-2.

241. *Id.* at *2.

242. *See id.* at *3.

243. *See id.* at *1-4, *16.

244. *Id.* at *18.

245. *See id.* at *26.

including biting him, choking him, and breaking his ribs and forearm.[246] Lewie had lived with Flint since Colbi was three months old, and she frequently left Colbi alone with Flint while she worked, despite telling six witnesses that she knew Flint abused Colbi.[247] Lewie also told witnesses that Flint was physically abusing her.[248] Lewie was at work and not physically present when Flint murdered Colbi.[249]

The Crumbleys' conduct is arguably distinct from that of a passive abuser who is present to witness actual violent abuse prior to the killing. Parents convicted of homicide by passive abuse who are not present at the time of the killing are typically present to witness a crescendo of violence prior to the moment of killing. In *Lewie*, for example, witnesses testified that Lewie knew Flint was violently abusing both Colbi and herself in the time leading up to Colbi's death.[250] Though the Crumbleys did not witness Ethan commit acts of violence prior to the Oxford High School shooting, they observed conduct which indicated a similar risk of violence, specifically that he would use a gun to harm others: Ethan's hallucinations and deteriorating mental health, violent drawings (some of which involved guns), and general obsession with firearms.[251]

Some passive-abuse convictions can be read to stand for the principle that parents who observe violence and continue to place a child in that source of violence's care unjustifiably expose the child to a substantial risk of death.[252] The Crumbleys may not have witnessed Ethan commit prior acts of violence, but they witnessed other warning-sign behaviors indicating the risk of future violence.[253] Like parents who provide a known abuser access to their child, the Crumbleys provided a child who they knew, or at least should have known, was violent and at particular risk of committing a shooting with access to a firearm.

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246. *See* 953 N.E.2d 760, 762-63 (N.Y. 2011).

247. *Id.* at 763.

248. *Id.* at 764.

249. *Id.*

250. *Id.* at 763-64.

251. *See* People v. Crumbley, 11 N.W.3d 576, 580-86 (Mich. Ct. App. 2023) (chronicling Ethan's behavior leading up to the Oxford High School shooting).

252. *See, e.g.*, *Lewie*, 953 N.E.2d at 764-65 (describing Lewie's liability).

253. The distinction between a risk of death to the parent's *own* child and the risk of *another* child's death is discussed later in this section. *See infra* Part II.C.

The Crumbleys, like any other party accused of manslaughter under Michigan law, did not need to *know* of the risk that their conduct would cause a death.[254] Importantly, the Crumbleys' offense of manslaughter only requires criminal negligence causing death,[255] not *actual knowledge* and disregard for the risk of death, like in *Lewie*,[256] or the commission of an underlying felony, like in *Prince*.[257] Observing actual violence prior to the child's death is arguably not a relevant distinction when the Crumbleys observed other clear warning signs. But to the extent that it is, that distinction is reflected in the lower mens rea required for their offenses.

One could reasonably describe the Crumbleys as more blameworthy than many a convicted passive abuser. The Crumbleys were not coerced or threatened into failing to treat their son's condition or putting a pistol in his hand. By contrast, passive abusers frequently *are* coerced into failing to prevent a third party's violent acts;[258] in addition to New York in *Lewie*, at least eight other states have convicted defendant mothers who were also abused by their children's killers.[259] Those convictions were upheld on appeal despite

254. *See, e.g.*, People v. Holtschlag, 684 N.W.2d 730, 740-41 (describing negligence required for manslaughter in Michigan).

255. *See Crumbley*, 11 N.W.3d at 588 (describing felony complaints against James and Jennifer Crumbley alleging gross negligence).

256. *See* 953 N.E.2d at 764 (describing manslaughter liability in New York as requiring recklessness).

257. *See* State v. Prince, No. E2019-02058-CCA-R3-CD, 2021 WL 4316838, at *26 (Tenn. Crim. App. Sep. 23, 2021) (describing indictment for felony murder requiring that the killing occurred in the perpetration of underlying aggravated child abuse and aggravated child neglect felonies).

258. *See, e.g.*, Linda J. Panko, *Legal Backlash: The Expanding Liability of Women Who Fail to Protect Their Children From Their Male Partner's Abuse*, 6 HASTINGS WOMEN'S L.J. 67, 86 (1995) ("[C]hild abuse is found in over 50% of battering cases." (citing Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 551 (1992))).

259. *See* Key v. State, No. 23A-CR-1754, 226 N.E.3d 229, 2023 WL 8524286, at *1 (Ind. Ct. App. 2023) (unpublished table decision) (affirming mother's conviction when father killed child and was abusing mother); Perez v. State, No. 56172, 373 P.3d 950, 2011 WL 6916480, at *2, *13 (Nev. Dec. 28, 2011) (unpublished table decision) (affirming first-degree murder conviction for mother who argued she failed to intervene because she was a victim of abuse); State v. Burrell, 160 S.W.3d 798, 799, 801 (Mo. 2005) (en banc) (affirming mother's second-degree felony murder when father killed child after abusing mother as well); State v. Mott, 931 P.2d 1046, 1047-49 (Ariz. 1997) (en banc) (affirming the conviction of defendant mother, also a victim of abuse, who failed to prevent her boyfriend's abuse of her children); State v. Long, No. 93-3235-CR, 532 N.W.2d 468, 1995 WL 121431, at *14 (Wis. Ct. App. 1995) (unpublished table decision) (affirming first-degree intentional-homicide conviction of abused

evidence that the defendants in each case would be required to risk their own lives to intervene on behalf of their children.[260]

Illinois and Rhode Island have convicted parents who failed to report a third party injuring their children because of fear that child services would take their children from them.[261] In *State v. Cacchiotti*, a Rhode Island Supreme Court case, the defendant's fear arose from the killer's own statements.[262] Maryann Cacchiotti's boyfriend beat her three-year-old son to death, and she failed to intervene.[263] Cacchiotti voiced concerns about the beatings, but her boyfriend told her "she would have a problem ... and they would take the children away from her."[264] In addition to physically abusing her, Cacchiotti's boyfriend coerced her through the threat of losing her children to the State.[265]

Still more states have convicted other passive abusers whom a reasonable observer may find less culpable than the Crumbleys. For example, in *Palmer v. State*, the Maryland Court of Appeals upheld the involuntary-manslaughter conviction of a defendant mother whose boyfriend murdered her daughter, despite the fact that the defendant-mother was a minor at the time of the killing.[266] To the extent that a third party committing a preventable killing is foreseeable, one might consider a minor as less culpable in failing

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wife and holding that, even if she were not the principal actor, she "was capable of interceding" and thus "aided and abetted ... by failing to seek help"); State v. Cacchiotti, 568 A.2d 1026, 1028 (R.I. 1990) ("She stated that Flanigan beat the child in the bedroom with the paddle, and when she attempted to interfere, she was slapped in the face."); Johnson v. State, 508 So. 2d 443, 444, 446 (Fl. Dist. Ct. App. 1987) (per curiam) (upholding defendant's manslaughter sentence); State v. Hoffman, 639 P.2d 507, 508, 510 (Mont. 1982) (affirming mother's negligent-homicide conviction, despite father abusing both her and child). *But see Johnson*, 508 So. 2d at 444, 446 (Zehmer, J., dissenting) (arguing that defendant, who was convicted of manslaughter after her boyfriend beat her daughter in front of her, should have been allowed to present evidence at sentencing that her boyfriend abused her as well).

260. *See* cases cited *supra* note 259.

261. *See* People v. Stanciel, 606 N.E.2d 1201, 1205 (Ill. 1992) (citing evidence that by permitting child-victim's father to contact the child, defendant-mother violated the terms imposed by child services); *Cacchiotti*, 568 A.2d at 1026, 1028.

262. *See* 568 A.2d at 1027.

263. *Id.* at 1026-29.

264. *Id.* at 1027.

265. *See id.* at 1028.

266. *See* 164 A.2d 467, 468 (Md. App. Ct. 1960).

to predict and prevent the killing than middle-aged parents such as James and Jennifer Crumbley.[267]

Passive-abuser cases also show that parental homicide liability can be triggered by providing a third-party killer's weapon. In *State v. Edgar*, the Kansas Supreme Court upheld a father's first-degree felony-murder conviction after his wife performed a fatal form of religious discipline on their son.[268] Edgar was convicted based on accessory liability stemming from his failure to intervene and protect his son.[269] Edgar's liability was bolstered by the fact that he took his wife to the store and bought her the tape she used to restrain their son.[270] Edgar admitted during his testimony that he purchased the tape but claimed not to know what it was for.[271]

Similar to Edgar, James and Jennifer Crumbley purchased the instrument Ethan eventually used to commit the tragic shooting at Oxford High School and made it available to him on the day of the shooting.[272] To the extent their liability lies in providing the means with which Ethan accomplished the murders, cases like *Edgar*—in which homicide by passive abuse is evidenced, in part, by the provision of the means of the murder—serve as some precedent. Buying tape—especially if Edgar did not know its intended purpose—is at least arguably a more innocuous act than buying a firearm for a minor, particularly one with well-documented and severe mental health issues.

As in cases of medical neglect, community religious beliefs about gender roles and family discipline appear to strongly influence passive abusers. Courts of appeals in Texas and Kansas have affirmed passive-abuse first-degree murder convictions when the defendant and third party killed a child in their care while performing a

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267. *See, e.g.*, Brooke Troutman, Comment, *A More Just System of Juvenile Justice: Creating a New Standard of Accountability for Juveniles in Illinois*, 108 J. CRIM. L. & CRIMINOLOGY 197, 199 (2018) ("The Supreme Court has acknowledged ... that a new body of psychological and physiological science has changed what we know about adolescents, the adolescent brain, and adolescent development—mainly that the brain is still developing in its adolescent years in many key areas that impact decision-making skills and foreseeability." (citing Miller v. Alabama, 567 U.S. 460, 465 n.5 (2012))).

268. *See* 127 P.3d 1016, 1022-23 (Kan. 2006).

269. *Id.* at 1023-24.

270. *Id.* at 1022-24.

271. *Id.* at 1023.

272. *See* People v. Crumbley, 11 N.W.3d 576, 587, 591 (Mich. Ct. App. 2023).

violent religious ritual.[273] Defendants who fail to protect their children due to, at least in part, a genuinely held religious belief about discipline or family gender roles might exercise more restrained decision-making in permitting a killing.[274] James and Jennifer Crumbley presented no evidence that an outside cultural or religious pressure influenced their failure to treat Ethan's mental health condition, safely store the handgun he used to murder his classmates at Oxford High School, or remove him from the school on November 30.[275]

If courts or society view powerful cultural influences as having an impact on freely formed criminal mental states, a religious community's tenets or expectations concerning gender roles or family discipline might mitigate culpability.[276] Yet defendants have been found guilty of passive-abuse homicide based on their failure to stand up, not just against an abusive third party, but also against cultural and religious norms.

*Carson v. State* is a Texas case in which religious and social pressures influenced a defendant's liability for homicide by passive abuse.[277] Jesseca Carson lived with her boyfriend Blaine Milam for less than a year before he killed her thirteen-month-old daughter, Amora.[278] Over the course of their relationship, Milam isolated Carson from her family and the outside world, while he exacted an increasing amount of jealous control over her day-to-day life.[279] Eventually, Milam's extremist religious views reared their head in

273. Carson v. State, 422 S.W.3d 733, 737-38, 750 (Tex. Ct. App. 2013) (affirming conviction of defendant who permitted exorcism that killed daughter); *Edgar*, 127 P.3d at 1023-32 (affirming conviction when local church doctrine influenced killing).

274. *See, e.g.*, Walter H Hawes, IV, Note, *Faith-Healing Prosecutions: How Religious Parents Are Treated Unfairly by Laws that Protect Their Liberty*, 54 AM. CRIM. L. REV. 885, 897-900 (2017) (discussing fairness concerns in prosecuting parents who have acted on genuinely held religious beliefs in faith-healing homicide cases).

275. *See Crumbley*, 11 N.W.3d 576.

276. *See* Hawes, *supra* note 274, at 900; *cf.* Danae Robinson, Comment, *Battering Mothers for Their Abuser's Crimes*, 52 U.S.F. L. REV. 149, 152-53 (2018) (discussing the double standard for abused mothers expected to protect their children); Jacqueline Mabatah, Note, *Blaming the Victim? The Intersections of Race, Domestic Violence, and Child Neglect Laws*, 8 GEO. J.L. & MOD. CRITICAL RACE PERSPS. 355, 361 (2016) (discussing the duty of protection on mothers subject to abuse).

277. *See* 422 S.W.3d 733, 742 (Tex. Ct. App. 2013).

278. *Id.* at 738-39.

279. *Id.* at 738.

the relationship.[280] As the relationship progressed, Carson lost standing to challenge or question Milam's religious teachings.[281] Eventually, Milam informed Carson that Amora was possessed by a demon and required an exorcism.[282] In the course of the exorcism, during which Carson was in another room of the home, Milam brutally killed Amora by inflicting multiple severe internal and external injuries.[283] Carson testified that, at the time Milam killed her daughter, she did not know or understand what an exorcism was or how it was done.[284] Milam was sentenced to death, and Carson's capital murder conviction and sentence of life without the possibility of parole were affirmed on appeal.[285]

The Crumbleys were convicted of a lesser offense—manslaughter—for actions that were not influenced by external religious or community pressures.[286] Their decisions and omissions appear to be wholly their own, based on freely formed views of parenting, mental health, and gun safety.[287] To the extent that an independently formed criminal mindset bears on culpability and blameworthiness, the Crumbleys are perhaps less sympathetic than a large number of parents found guilty of homicide for passive abuse influenced by social and religious pressures.

Another cultural pressure in the ether, acting to dissuade passive abusers from intervening and preventing their child's death, is gender in American society. All but three of the aforementioned true passive abusers were women who failed to prevent a male partner from killing their children.[288] *Carson* involved gender-normative

280. *Id.* at 738-39.
281. *Id.* at 739.
282. *Id.*
283. *Id.*
284. *Id.*
285. *See id.* at 737-38, 750.
286. *See* People v. Crumbley, 11 N.W.3d 576, 579-80 (Mich. Ct. App. 2023).
287. *See id.* at 579-82, 586-87.
288. *See supra* note 215; State v. Edgar, 127 P.3d 1016, 1022 (Kan. 2006) (describing killing committed by wife and accomplice); State v. Delgado, 707 A.2d 1, 1-3 (Conn. 1998) (affirming live-in boyfriend's passive-abuse conviction for permitting mother to kill child); State v. Zobel, 134 N.W.2d 101, 104-06, 113 (S.D. 1965) (affirming manslaughter conviction of husband who failed to stop wife from killing); *see also* Gilson v. State, 2000 OK CR 14, ¶¶ 1, 17, 8 P.3d 883, 895, 898 (affirming *unknown abuser* conviction after jury was split on whether defendant actively abused but convicted based on theory that defendant permitted child's mother to kill child); Yellowbear v. State, 2008 WY 4, ¶ 1, 174 P.3d 1270, 1272 (Wyo. 2008) (affirming *unknown abuser* conviction for male defendant).

pressures in addition to religious ones.[289] Jesseca Carson was subjected to emotional abuse from a highly controlling partner who eventually killed her thirteen-month-old child in a botched exorcism.[290] One of the three male passive-abuser convictions, that of the tape-buyer Neil Edgar, involved religious pressures about juvenile discipline.[291]

It is difficult to imagine that prevalent social conditioning, involving the passive female or the subservient wife, plays no role in a female passive abuser's failure to stand up to her husband or boyfriend in defense of her children.[292] In some circumstances, the sheer difference in physical stature and strength may also deter female parents from standing between a male partner and an otherwise-defenseless child, even if the male partner has never abused the defendant.[293] Suffice it to say that James and Jennifer Crumbley were, by all available accounts, free from gender conditioning in exercising authority over Ethan.

In contrast to mothers who may have societally reinforced conscious or subconscious barriers to confronting violent men, the Crumbleys' independent control over Ethan is one of the very cornerstones of their liability.[294] When compared to convicted mothers whose breach of duty was declining to prevent harm from violent and abusive male partners, James and Jennifer Crumbley's failure

289. *See* 422 S.W.3d at 738.

290. *See id.* (detailing how Blaine Milam, Carson's boyfriend who killed her child, isolated her from her family and prevented her from using the internet or otherwise interacting with the world outside their home).

291. *See Edgar*, 127 P.3d at 1023 (describing religious influence on killing).

292. *See, e.g.*, Kaley Gordon, Note, *Finding Favor: A Call for Compassionate Discretion in Cases of Battered Mothers Who Fail to Protect*, 13 DREXEL L. REV. 747, 765-68 (2021) (discussing abused mother's psychological barriers to protection); Jeanne A. Fugate, Note, *Who's Failing Whom? A Critical Look at Failure-to-Protect Laws*, 76 N.Y.U. L. REV. 272, 287-300 (2001) (describing the role of gender stereotyping in blaming mothers for failing to protect children from abusive fathers or male partners); Michelle S. Jacobs, *Requiring Battered Women Die: Murder Liability for Mothers Under Failure to Protect Statutes*, 88 J. CRIM. L. & CRIMINOLOGY 579, 587 (1998) ("Though the law holds both parents to the same duty, society particularly expects that the mother will be the child's protector.").

293. *See, e.g.*, Fugate, *supra* note 292, at 292 n.88 ("An Illinois court emphasized twice that the boyfriend of a mother charged with failure to protect was a large man, at six feet, three inches tall. Yet the attacker's size was seen as more damning to the mother's case, because of the great deal of damage he could do to the children, rather than exculpatory, because of the great deal of damage he could do to the woman." (citation omitted) (citing People v. Bernard, 500 N.E.2d 1074, 1075, 1078, 1083 (Ill. App. Ct. 1986))).

294. *See* People v. Crumbley, 11 N.W.3d 576, 594 (Mich. Ct. App. 2023).

to store a handgun or to listen to their son's cries for help might reasonably appear more blameworthy.[295] From a public policy perspective, James and Jennifer Crumbley's manslaughter convictions involve at least as much, or probably more, culpability than many passive abusers convicted of the same or more serious offenses.

The prevalence of passive-abuser homicide convictions reframes the novelty of James and Jennifer Crumbley's convictions. The previous Subpart, using the example of medical neglect, discussed precedent for parental homicide liability by acts of omission breaching parental duty.[296] One fact that distinguished the Crumbleys from medical-neglect cases was Ethan's intervening criminal act. The passive-abuser case law closes that gap by demonstrating that parental homicide can occur despite a third party's intervening and intentional criminal act.[297] But the *Crumbley* case involved another distinguishing feature: James and Jennifer's victims were third-party children, not their own son.[298] The next Subpart addresses this issue.

### *C. Third-Party Victim Identity: Duty at Law and Proximate Causation*

A notable difference between the Crumbleys and parents convicted of homicide by medical neglect or passive abuse is victim identity. So far, the discussion in this Part has involved parents who kill their *own* children through medical neglect or passive abuse. James and Jennifer Crumbley, of course, were convicted based on their failure to control and prevent Ethan from killing *other* children.[299] To the extent that the Crumbley parents share a common culpability with parents who kill by medical neglect or passive abuse, they differ in this respect. Though *Crumbley* appears to expand parental homicide liability to cases involving third-party victims,[300] this expansion is consistent with the parental duty at law and traditional modes of criminal liability and proximate causation.

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295. *See id.*
296. *See supra* Part II.A.
297. *See supra* notes 217-19 and accompanying text.
298. *See Crumbley*, 11 N.W.3d at 579.
299. *See id.*
300. *See id.* at 594.

This Subpart presents two justifications for the parental duty encompassing homicide liability for failing to prevent a school shooting in circumstances like the Crumbleys'. First, the parental duty is, for the most part, one established at common law;[301] the common law of torts acknowledges a parent's liability for failing to prevent their child from causing harms to third parties.[302] Indeed, in the criminal space, at least one state supreme court has affirmed a parental-homicide-by-medical-neglect conviction using a jury instruction on parental duty from tort law.[303] Criminal law also acknowledges misdemeanor liability for failing to prevent a child's bad acts and, in some circumstances, for failing to report a crime or to rescue a victim.[304] Second, even if courts strictly limit a parent's duty to one to protect their own child, the scope of the duty does not strictly limit the scope of potential victims of the parent's conduct. Even if a parent's omissions must risk harm to *their* child to incur criminal liability, the parent is still liable for harms that omission causes to other foreseeable victims.

### *1. The Duty at Tort Law*

Courts considering cases of homicide by breach of parental duty have declined or failed to provide a clear standard for the contours of the parental duty.[305] Acknowledging limitations on its applicability to criminal law, tort law can be helpful in determining

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301. *See, e.g.*, *Religious Belief as a Defence for Failure to Provide Medical Attendance*, 15 HARV. L. REV. 500, 500-01 (1902) (first citing John H. S. Lee, *Is a Parent Liable at Common Law on a Charge of Manslaughter for Negligently Omitting to Furnish Medical Attendance to His Child of Tender Years, in Consequence of Which Death Ensues, Where the Failure to So Provide Was Due to Religious Disbelief of the Parent in the Efficacy of Medicine?*, 9 AM. LAW. 565 (1901); then citing R. v. Wagstaffe (1868), 10 Cox Crim. Cases 530 (QB) (UK); and then citing R. v. Downes (1875), 13 Cox Crim. Cases 111 (QB) (UK)) (establishing that the parental duty was adopted from English common law into American common law).

302. *See* RESTATEMENT (SECOND) OF TORTS § 316 (A.L.I. 1965).

303. *See* State v. Neumann, 2013 WI 58, ¶ 101, 832 N.W.2d 560, 587.

304. *See infra* text accompanying notes 323-27.

305. *See, e.g.*, State v. Mally, 366 P.2d 868, 871-72 (Mont. 1961) (discussing different interpretations of the parental duty in Montana, other states, and at common law, characterizing it as a duty to "provide the necessities of life," "provide medical aid," or "rescue" one in "peril" (first quoting People v. Beardsley, 113 N.W. 1128, 1129 (Mich. 1907); then citing State v. Bischert, 308 P.2d 969 (Mont. 1957); and then citing Territory v. Manton, 19 P. 387, 393 (Mont. 1888))).

the scope of the parent's common law duty to their child generally.[306] Definitions of the duty at tort law do not definitively dictate the scope of the term in criminal law, and courts should be careful not to expand criminal liability by equating civil and criminal standards of conduct.[307] Nonetheless, the duty's scope in other areas of law can provide some (perhaps limited) clarity on the contours of the duty when the criminal law provides no uniform definition.[308]

The common law of torts recognizes that the parent-child relationship can bring about liability for a parent whose child causes harm to third parties.[309] In fact, state courts that have upheld homicide convictions based on a breach of parental duty have cited tort law to define a parent's legal duty to their child.[310]

For example, Wisconsin's parental-duty jury instruction, used in criminal cases including homicide by medical neglect, derives from tort law. In *State v. Neumann*, the Wisconsin Supreme Court affirmed the reckless homicide convictions of two parents who killed their daughter through medical neglect by faith healing.[311] The defendants' eleven-year-old daughter, Madeline, tragically passed away from diabetic ketoacidosis after her parents treated her juvenile-onset diabetes with prayer, rather than traditional medicine.[312] The Neumanns challenged the jury instruction in their case, in part, as failing to establish a legal duty to provide medical

306. *See, e.g.*, *Neumann*, 832 N.W.2d at 587-90 (affirming parental homicide conviction by medical neglect and approving of jury instruction on parental duty derived from civil law); *see also* MODEL PENAL CODE § 2.01(3)(b) (A.L.I. 1985) (describing the criminal-law duty to act as one "otherwise imposed by law").

307. *See, e.g.*, Commonwealth v. Barnhart, 497 A.2d 616, 626 (Pa. Super. Ct. 1985) (distinguishing proximate causation in tort from proximate causation in criminal law, finding that the former plays "no role in a prosecution for criminal homicide" (citing Commonwealth v. Root, 170 A.2d 310 (Pa. 1961))).

308. *See, e.g.*, Monu Bedi, *Expanding Homicide Liability for a Parent's Omission*, 2024 CARDOZO L. REV. 133, 141-47 (2024), https://cardozolawreview.com/wp-content/uploads/2024/10/BEDI_Expanding-Homicide-Liability_denovo_46-2.pdf [https://perma.cc/W6K4-F62M] (noting the duty's expansion in *Crumbley* from a tort duty to prevent child's harm to one incurring homicide liability, and discussing due process and public-policy concerns associated with the expansion).

309. *See* RESTATEMENT (SECOND) OF TORTS § 316 (A.L.I. 1965).

310. *See, e.g.*, Palmer v. State, 16 A.2d 467, 474 (Md. 1960) (citing the Restatement of Torts to determine that defendant's passive abuse, in failing to stop a third party from killing her child, constituted an omission in violation of parental duty); *see also Neumann*, 832 N.W.2d at 587-90 (approving use of civil-law instruction on parental duty).

311. *See* 832 N.W.2d at 560.

312. *Id.* at 567.

care.[313] The Wisconsin jury instruction on parental duty in *Neumann* was borrowed from a tort law standard of parental duty, which had been adopted in criminal cases in the state.[314] The Wisconsin Supreme Court affirmed Neumann's conviction and upheld the use of the parental-duty instruction borrowed from tort law.[315]

The parental duty at tort law generally applies to instances in which a parent's failure to prevent a child's dangerous behavior injures third parties. To the extent that tort law can help define the contours of a parent's duty at criminal law toward their children, the Restatement (Second) of Torts ("Restatement") provides relevant guidance.[316] Indeed, the Restatement includes a section on a parent's duty to control the behavior of their child:

> A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent
>
> (a) knows or has reason to know that he has the ability to control his child, and
>
> (b) knows or should know of the necessity and opportunity for exercising such control.[317]

In other words, a parent incurs tort liability when they negligently fail to exercise control over their child to prevent that child from inflicting harm or serious risk of bodily harm to others.[318] So the common law of torts explicitly includes the responsibility to prevent a child from causing harm to others as a component of the parental duty.[319]

313. *Id.* at 587.
314. *See id.*
315. *See id.* at 569, 589-90.
316. *See* RESTATEMENT (SECOND) OF TORTS § 316 (A.L.I. 1965).
317. *Id.*
318. *See id.*
319. *See id.*

Indeed, the *Crumbley* case itself used the duty at tort to provide context for James and Jennifer's parental failures.[320] Professor Monu Bedi's recent essay notes that the charging language in *Crumbley* is nearly identical to the Restatement's provision on parental liability for their children's harms to third parties.[321] The judge's jury instructions in the *Crumbley* trial also expressed a common law duty, derived from tort law, which included a parent's responsibility "to control their minor child so as to prevent the minor child from intentionally harming others or prevent the minor child from conducting themselves in a way that creates an unreasonable risk of bodily harm to others."[322]

*2. Parental Duty and Proximate Causation in Criminal Cases*

All fifty states have now adopted some form of criminal liability for a parent's failure to prevent their child's unlawful act.[323] These statutes explicitly punish a parent for the omission of duty in preventing their child from causing social harm.[324] Professor Zachary Kaufman has noted that twenty-eight states and Puerto Rico currently employ "Bad Samaritan" laws, requiring third parties to report certain crimes or rescue certain victims.[325] Some jurisdictions' "Bad Samaritan" laws specifically apply to crimes with minors as victims.[326] Both parental liability and "Bad Samaritan" statutes classify related offenses as misdemeanors, incurring significantly less punishment than would a conviction for any form of homicide.[327] Widespread criminalization of a breach of parental duty demonstrates that the duty to prevent a child from causing harms to third parties exists in the criminal law. Whether courts

320. *See* People v. Crumbley, 11 N.W.3d 576, 588 (Mich. Ct. App. 2023).

321. *See* Bedi, *supra* note 308, at 143-44 (citing *Crumbley*, 11 N.W.3d at 588).

322. *Id.* (quoting WXYZ, *Judge Gives Jury Instructions in Jennifer Crumbley Trial*, at 15:30-15:46 (YouTube, Feb. 5, 2024), https://www.youtube.com/watch?v=wnrMMkyJzWQ [https://perma.cc/TZ6E-BX66]).

323. *Id.* at 140-41 (describing widespread criminal prohibitions on parental omission of duty causing child's social harm).

324. *Id.*

325. *See* Zachary Kaufman, *Protectors of Predators or Prey: Bystanders and Upstanders amid Sexual Crimes*, 92 S. CAL. L. REV. 1317, 1346-47 (2019) (discussing and substantively surveying modern "Bad Samaritan" laws, and characterizing them as prevalent and diverse).

326. *Id.* at 1344.

327. *Id.* at 1341; Bedi, *supra* note 308, at 141.

can or will invoke the duty in felony cases benefits from examining general proximate causation doctrine.

Even if courts considering felony criminal cases limit a parent's duty of care to require preventing harms only *to* their child, not *from* their child, general principles of criminal liability still recognize that third parties can be the natural victims of such conduct.[328] Under this narrow view of the duty, a parent might easily kill or injure a third-party victim through a failure to care for their own child, meeting the elements of negligent homicide or involuntary manslaughter.[329] That parent's failure to prevent a harm from befalling their child might foreseeably result in third-party deaths. This will often be the case when a parent's criminal neglect results in a school shooting.

Imagine for a moment that courts hearing felony cases uniformly took a clear and narrow view of a parent's duty to their child. Courts in this hypothetical could limit parents' criminal responsibility for failing to protect the wellbeing of *their own* child. Such an approach could even lead courts to adopt an extremely limited view and define parental duty exclusively as the duty to prevent *serious physical or psychological harm* from befalling their own child. Under these proposed definitions of parental duty, traditional modes of criminal liability would still recognize third parties as appropriate victims of a homicide by parental omission.[330]

Even under these narrow hypothetical interpretations, the parents of a school shooter can reasonably and foreseeably incur criminal liability for omissions risking serious injury to *their* child but resulting in harm to *other* children or third parties. Criminal conduct always requires a physical and causal component, or actus reus.[331] Actus reus comprises the voluntary act or qualifying omission, and a causal relationship between that act and the resulting harm to a victim.[332] Identifying an act or omission is the first step in an analysis of the physical component, or actus reus, of a criminal offense, but is not the end of the inquiry, nor does it define the scope

328. *See* MODEL PENAL CODE § 2.03(3)(a) (A.L.I. 1985).
329. *See id.* §§ 210.3(1)(a), 210.4.
330. *See id.* § 2.03(3)(a).
331. *See supra* notes 93-94 and accompanying text.
332. *See id.*

of potential victims of criminal behavior.[333] The act or omission must cause the harm, but no principle of law limits the scope of the harm to the party who was the target of the act or omission.[334]

The MPC instructs that omissions cannot bring about criminal liability absent a duty imposed by law.[335] Even under a strictly limited view of parental duty, only the first inquiry in an actus reus analysis for the crime of parental homicide, whether a parent's omissive conduct can qualify as criminal, is limited to a harm befalling the parent's own child. But if the parent's act risks harm to their own child, and the direct, natural, and foreseeable result of that conduct *also* includes harm to third parties who are then actually harmed, the parent has proximately caused that third party's injury.[336] Whether the omission risks harm to the parents' own child is a threshold question in determining if criminal liability generally may apply to the omission, but it does not determine the scope of appropriate victims of the offense generally.[337]

Whether the act or omission causes harm to a particular victim, and whether that victim is the proper subject of a criminal act, is a question of actual and proximate causation.[338] This Part discusses the MPC's guidance that, when a party's injury is proximately caused by the defendant's conduct, that party is a natural and appropriate victim of the target offense. On criminally reckless or negligent conduct causing harm, the MPC states that negligent or reckless conduct (such as the negligence required for a conviction similar to the Crumbleys') causes harm when the actual harm is "within the risk of which the actor is aware or ... should be aware."[339]

One might end the inquiry there and acknowledge that parents in a position similar to the Crumbleys' should reasonably foresee that their children will harm third-party victims, and that harm to those third parties is therefore "within the risk"[340] of which the parents should be aware. That is, ultimately, what the Michigan

333. *See* MODEL PENAL CODE § 2.01(1) (A.L.I. 1985).
334. *See id.* § 2.03.
335. *See id.* § 2.01(3).
336. *See id.* § 2.03.
337. *See id.*
338. *See id.*
339. *Id.* § 2.03(3).
340. *Id.*

Court of Appeals concluded in the Crumbleys' interlocutory appeal on the issue of proximate causation.[341] However, the MPC provides more explicit guidance justifying criminal liability for a parent's omission causing third-party injury or death.

The MPC directly addresses negligence directed toward one victim, but which actually causes harm to another.[342] The MPC attaches criminal liability, under a causation analysis, in circumstances in which "the actual result differs from the probable result only in the respect that a different person ... is injured or affected."[343] Thus, when victim identity is the only difference between the danger risked by omissive conduct and the harm actually suffered by a victim, the MPC recognizes that a defendant's negligence has caused the harm. This reading is consistent with the concept that foreseeability of risk is the touchstone of proximate causation: If a type of injury was foreseeable, then the defendant proximately caused it, even if the foreseeable harm befalls a different victim than initially risked or contemplated.[344]

So, under the MPC's guidance, negligence with regard to one potential victim can still incur criminal liability for actual harms suffered by third-party victims, as long as one of the following is true: (1) the third-party harm was "within the risk" of the initial negligent act; or (2) the third-party harm was not within the risk, but only because the actual victim was a different person than the probable victim at the outset of the criminal act.[345] Criminally negligent parents of school shooters, at least those facing circumstances that are somewhat factually similar to the Crumbleys', fit neatly within the MPC's independently sufficient criteria for incurring criminal liability.

"Within the risk" causation is perhaps the mode of parental liability for third-party deaths most impacted by a narrow reading of parental duty. On one hand, when third-party injuries are foreseeable, courts might find the injuries "within the risk" that a negligent parent should have contemplated when they failed to behave reasonably with regard to their own child. This is the

341. *See* People v. Crumbley, 11 N.W.3d 576, 592-93 (Mich. Ct. App. 2023).
342. MODEL PENAL CODE § 2.03(3)(a) (A.L.I. 1985).
343. *Id.*
344. *See, e.g.*, *Crumbley*, 11 N.W. 3d at 591-92.
345. MODEL PENAL CODE § 2.03(3)(a) (A.L.I. 1985).

approach the Michigan Court of Appeals took in the Crumbleys' interlocutory appeal.[346] The *Crumbley* court found that it was reasonably foreseeable that James and Jennifer's omissive conduct would result in Ethan's "shoot[ing] somebody" on November 30, 2021.[347] This is a straightforward application of proximate-causation analysis to capture a zone of potential victims of the Crumbleys' negligence. Even under a narrow view of parental duty,[348] the Michigan Court of Appeals' approach in *Crumbley* acknowledged that acts failing to protect or care for one's own child might proximately cause harm to third parties when those harms were foreseeable or "within the risk" of the initial negligent behavior.[349]

But imagine that courts similarly restrict a "within the risk" analysis and limit its application to risks inherent in the parent-child relationship, that is, harm *to* the parents' own child. A court adopting this approach *could* argue that the "risk" with regard to a parent's omission is limited by the parent-child relationship only to those risks befalling the parent's own child. Though no court has explicitly stated such a limitation, it might arguably flow from a strictly limited view of parental duty. One might argue that, if a parent's omissive conduct incurs criminal liability only when it harms their own child, the risk to which they respond negligently must also be limited to a risk to their own child. Such an analysis might exclude "within the risk" causation from attaching to third-party injuries stemming from a breach of parental duty.

Even under the strictest possible reading of both the parent-child duty and "within the risk" causation, MPC causation works to incur parental homicide liability for third-party deaths.[350] Perhaps most convincingly, the MPC acknowledges that criminal liability can attach when the only difference in causation is victim identity.[351] Under the narrowest hypothetical reading of parental duty,

346. *See Crumbley*, 11 N.W.3d at 594 n.12.

347. *See id.*

348. The *Crumbley* court does not appear to have adopted any such limited view. Rather, the court evaluated the Crumbleys' conduct as omissive in nature, pursuant to a duty, but separately analyzed whether the actual harms were foreseeable under a plain proximate-causation analysis. *See id.* at 591-93.

349. *See id.* at 594.

350. *See* MODEL PENAL CODE § 2.03(2)(a), (3)(a) (A.L.I. 1985).

351. *Id.*

discussed earlier, a parent's omission would incur liability because they failed to protect their child from significant physical or psychological harm.[352] The MPC embraces liability when parents cause the same type of harms, through the same culpable conduct, but the victim happens to be a different person.[353] The parents of a school shooter who fail to protect their own child, and whose actions still foreseeably cause the same type of harm to a different child, fall within this mode of causation and incur criminal liability. When the parents of a school shooter breach a parental duty by an omission that risks death or injury to their child, and another child is harmed as a result, the MPC considers the third-party child an appropriate victim.[354]

Take the Crumbleys, for example. Their criminal acts and omissions include (1) failing to provide mental health treatment for Ethan, (2) gifting him a firearm and making it accessible to him, and (3) failing to remove him from school on November 30, 2021.[355] Each of these acts or omissions breached a duty to prevent harm to Ethan. The first omission is perhaps most obvious and analogous to killings by medical neglect[356]: James and Jennifer failed to provide medical attention that a reasonable parent would have provided, to the detriment of Ethan's wellbeing and, ultimately, to that of the victims at Oxford High School.[357] He continued to suffer from paranoid delusions, which might have been treated through psychiatric attention.[358] Given his mental state, purchasing a firearm and leaving it accessible to Ethan also unreasonably risked harm *to* Ethan, and thus qualifies as an act with the potential to incur criminal liability, even under a narrow view of the duty as being to protect only the parent's own child from harm.[359] Failing to remove Ethan from school risked causing him serious physical or psychological harm as well, as school officials expressed sincere

352. *See supra* note 329 and accompanying text.
353. *See* MODEL PENAL CODE § 2.03(3)(a) (A.L.I. 1985).
354. *Id.*
355. People v. Crumbley, 11 N.W.3d 576, 591-93 (Mich. Ct. App. 2023).
356. *See supra* Part II.A.
357. *See Crumbley*, 11 N.W.3d at 593.
358. *See id.* at 592.
359. *See id.* at 593.

concern that Ethan was a risk to himself and needed immediate psychiatric attention.[360]

Each of those actions risked harm to Ethan but caused harm to third parties under the doctrine of proximate causation.[361] Under a "within the risk" analysis, one might characterize the Crumbleys' conduct as creating a foreseeable risk of harm to third parties. This appears to be the view of the *Crumbley* court, which described the risk as one that Ethan would foreseeably "shoot someone" that day.[362] Even under another hypothetical court's highly limited view, in which only harms to *Ethan* are "within the risk," the Crumbleys' negligence still proximately caused harms to third parties when the only difference between the contemplated harm and the actual harm was victim identity.[363] Under that analysis, the threat posed to Ethan by allowing him access to a firearm, given his mental state, was that he would use that firearm to shoot himself. That he shot third parties is only a change in victim identity, still proximately caused by James and Jennifer's negligence with regard to harms to Ethan.[364]

Proximate-causation analysis will rely on the particular facts of the case, particularly on whether the third-party deaths were foreseeable to the defendant-parent at the time of their negligence.[365] Though a third party's intentional misconduct *generally* severs proximate causation, *Crumbley* was distinct in that it involved repeated negligence in disregarding clear signs of danger that Ethan would commit a shooting.[366] Shortly after *Crumbley*, the Michigan Court of Appeals seized the opportunity to emphasize the importance of foreseeability, particularly foreseeability based on familiarity with the intervening third party.

In *People v. Aiyash*, the Michigan Court of Appeals considered, for the first time since *Crumbley*, whether a third party's intentional

360. *See id.* at 586.

361. *See id.* at 593-94.

362. *See id.* at 594 n.12.

363. *See* MODEL PENAL CODE § 2.03(3)(a) (A.L.I. 1985).

364. *See Crumbley*, 11 N.W.3d at 593-94.

365. *See, e.g.*, *id.* at 591.

366. *See id.* at 592-93; *see also* Shaundra K. Lewis, *The Cost of Raising a Killer—Parental Liability for the Parents of Adult Mass Murderers*, 61 VILL. L. REV. 1, 19-21 (2016) (discussing proximate-causation analysis as hinging on the foreseeability of a third party's behavior).

misconduct severed proximate causation.[367] In *Aiyash*, the defendant gas station clerk, Al-Hassan Walid Aiyash, locked bystanders inside a Detroit gas station during an altercation with a disturbed patron, Samuel McCray.[368] Aiyash refused to open the doors to let bystanders out, despite their repeated pleas to leave for their own safety after McCray's disposition became more troubling.[369] Aiyash taunted McCray while standing behind bullet-proof glass.[370] McCray, believing one of the bystanders had insulted him, shot and killed the bystander.[371] The Michigan Court of Appeals dismissed the involuntary manslaughter charge against Aiyash, finding he did not proximately cause the bystander's death because McCray's shooting a third-party patron was not foreseeable and thus severed proximate causation.[372]

The *Aiyash* court reaffirmed the principle that, even when a defendant has acted negligently, intentional misconduct by a third party that factually causes the resulting harm to a victim "generally" severs proximate causation and absolves the defendant of criminal liability.[373] Though *Aiyash* involved the dismissal of a homicide charge for a defendant who failed to prevent another from killing, its analysis significantly reaffirms the principles upon which future parents of school shooters might be charged and convicted for their children's killings. The court compared *Aiyash* to *Crumbley*, noting that the Crumbleys' circumstances made Ethan's conduct foreseeable, given the clear warning signs that James and Jennifer ignored.[374] The court distinguished Aiyash's conduct primarily because "[n]othing in the record [indicated Aiyash] had previously interacted with McCray, knew McCray was dangerous, or knew McCray had mental-health issues."[375] The court found that Aiyash "simply lacked knowledge similar to that of the defendants in

367. *See* No. 369689, 2024 WL 4293329, at *5 (Mich. Ct. App. Sep. 25, 2024).
368. *Id.* at *1.
369. *Id.*
370. *Id.*
371. *Id.*
372. *See id.* at *6.
373. *See id.*
374. *See id.* (citing People v. Crumbley, 11 N.W.3d 576, 594 (Mich. Ct. App. 2023)).
375. *Id.* at *5.

*Crumbley* which made [Ethan]'s intentional misconduct in that case reasonably foreseeable."[376]

While a store clerk may not reasonably foresee the criminal conduct of a stranger, the parents of school shooters present a different story. At least those parents who provide a firearm for a child exhibiting a delusional, paranoid, and violent mental state may reasonably foresee that their children will use that firearm to kill third parties. One might argue, and some have, that the Crumbleys' situation is singularly egregious and unlikely to recur in future cases.[377] As the next Part discusses, the Crumbleys' circumstances are perhaps not as unique as they first appear.

## III. THE FUTURE OF PARENTAL HOMICIDE LIABILITY: THE DUTY TO PREVENT TEST, APALACHEE HIGH SCHOOL, AND BEYOND

The history of medical-neglect and passive-abuse homicide convictions throughout American jurisprudence provides context for James and Jennifer Crumbley's manslaughter conviction. A careful reading of the scope of parental duty and general principles of criminal liability indicates that third-party victims can be the natural and foreseeable victims of parental homicide by omission. *So what*?

I posit that the Crumbley parents' convictions were not only consistent with past parental homicide cases, but that the arrest, trial, and conviction of a school shooter's parents will become a recurring response in our judicial system. As Part II discussed, the roots of parental homicide liability for a school shooting run deep, in the form of a nationwide history of homicide convictions based on medical neglect and passive abuse.[378] Now that prosecutors have successfully tried a school shooter's parents as principals in a homicide, others are likely to do the same.

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376. *Id.* at *7 (citing *Crumbley*, 11 N.W.3d at 594); *see also* Lewis, *supra* note 366, at 20-21 (discussing the foreseeability of a child's mass shooting from the perspective of their parents).

377. *See, e.g.*, People v. Crumbley, 11 N.W.3d 576, 597 (Mich. Ct. App. 2023) (Riordan, J., concurring).

378. *See supra* Part II.

### *A. The Crumbleys, Colin Gray, and the Duty to Prevent Test*

Karen McDonald, the prosecutor who convicted James and Jennifer Crumbley, has made clear that she viewed her case as unlikely to influence future prosecutions because of its "very, very rare and egregious set of facts."[379] So far, the academic literature covering James and Jennifer Crumbley's convictions has also predicted that parental prosecutions following school shootings will not recur.[380] I disagree. The principles behind convicting the Crumbleys are not new; they are longstanding: (1) a parental duty to children, the breach of which risks homicide liability;[381] (2) homicide liability by omission, not necessarily positive action, as in the medical neglect cases;[382] (3) a duty to prevent third parties from causing harm as a component of the parent-child relationship, as demonstrated in the passive abuser cases;[383] and (4) a proximate-causation-focused contemplation of foreseeable third-party victims.[384] Michigan prosecutors melded those principles to hold the Crumbleys liable for their failure to prevent their child from committing the murders at Oxford High School.[385] As school shootings have become a scourge on American society, other prosecutors are likely to follow Michigan's lead.

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379. Linah Mohammad, Sarah Handel & Ailsa Chang, *Prosecutor in Crumbley Case Cautions Charges Are the Exception, Not the Norm*, NPR: ALL THINGS CONSIDERED (Apr. 9, 2024, at 16:40 ET), https://www.npr.org/2024/04/09/1243752627/prosecutor-in-crumbley-case-cautions-charges-are-the-exception-not-the-norm [https://perma.cc/WJG5-YQC4].

380. *See, e.g.*, Luis E. Chiesa, *Mass Shooting by Omission*, 92 TENN. L. REV. 355, 376 (2025) ("[I]mposing liability for homicide by omission based on a failure to control presents significant hurdles."); Abigail C. Letts, Comment, *You Are Your Child's Keeper:* People v. Crumbley *Opens the Door to Parental Criminal Liability*, 76 MERCER L. REV. 1699, 1724 (2025) ("[W]hile the *Crumbley* decision points towards possible evolution in the American legal system, it is possible Americans have not fully embraced parental culpability ... in circumstances as complex as school shootings."); Zangari, *supra* note 105, at 11 ("With considerable certainty, the Crumbley verdicts will not open the floodgates to a new avenue for criminal prosecution of parents ... whose children commit school shootings ... [because] most parents of school shooters were less aware of their children exhibiting risk factors of future violence.").

381. *See supra* Part II.

382. *See supra* Part II.A.

383. *See supra* Part II.B.

384. *See supra* Part II.C.

385. *See* People v. Crumbley, 11 N.W.3d 576, 588 (Mich. Ct. App. 2023).

I am also skeptical of the proposition, raised in existing coverage of the Crumbley conviction,[386] that James and Jennifer Crumbley's negligence was *so* egregious that future parents of school shooters will be unlikely to incur homicide liability.[387] A few recent examples are illuminating.

In 2023, Robert Crimo Jr. pleaded guilty to seven counts of reckless conduct in Illinois court.[388] In 2019, police conducted two welfare checks on Crimo Jr.'s son, who had attempted to commit suicide with a machete and threatened to kill his family.[389] Nonetheless, Crimo Jr. subsequently signed his son's application for an Illinois Firearm Owners Identification card.[390] Crimo Jr.'s son used the card to purchase a high-powered rifle, which he then used to kill seven people and wound dozens more at a 2022 Fourth of July parade in Highland Park, Illinois.[391] Similar to James and Jennifer Crumbley, Crimo Jr. facilitated his son's access to a firearm, despite the son's obviously compromised and deteriorating mental state.[392] Perhaps *more* egregious than the Crumbley fact pattern, Crimo Jr. did not just know that his son was mentally ill or drawing violent images; he was aware that his son's suicidal and homicidal ideations were severe enough that local police had to be notified.[393]

Also in 2023, Virginia mother Deja Taylor pleaded guilty to felony neglect for failing to properly store a handgun that her six-year-old son used to shoot his teacher.[394] Like the Crumbleys, Taylor did not secure her handgun with a trigger lock or other method.[395] Perhaps more egregious than the Crumbley fact pattern, Taylor's gun was

386. *See* Zangari, *supra* note 105, at 11.

387. *See id.* at 12 ("Jennifer and James Crumbley's level of awareness of Ethan's risk factors was significantly higher in comparison to prior cases.").

388. 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, at 16:57 ET), https://www.cnn.com/2023/11/06/us/robert-crimo-highland-park-shooting/index.html [https://perma.cc/FB9F-LUJN].

389. *Id.*

390. *Id.*

391. *Id.*

392. *See id.*

393. *See id.*

394. *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, at 20:18 ET), https://www.cbsnews.com/news/deja-taylor-sentenced-mother-6-year-old-shot-virginia-teacher-abby-zwerner-child-neglect/ [https://perma.cc/S5WK-Y3A7].

395. *Id.*

not even secured in a safe.[396] Taylor's son told police that he obtained the handgun by simply climbing to the top of her dresser, where it laid unsecured in Taylor's purse.[397] Taylor was sentenced to two years in prison.[398]

Ultimately, the Crumbley parents' convictions are not just consistent with state practice in medical-neglect and passive-abuse cases, they are indicative of a growing culpability for parents who negligently permit children to commit gun violence. Rather than viewing the Crumbley parents' convictions as outliers, I argue that they were a logical and consistent next step in a criminal justice system that already acknowledges homicide liability in doctrinally similar circumstances. And what is more, the Crumbley convictions epitomize a growing range of culpable parental behavior and homicide liability for a growing set of foreseeable harms.

The Crumbley convictions' impact on parental liability for school shootings is not theoretical; it is currently on display in real life. On September 6, 2024, Colin Gray was charged in an indictment alleging four counts of involuntary manslaughter, two counts of second-degree murder, and eight counts of cruelty to children.[399] Gray's fourteen-year-old son, Colt, committed a tragic shooting at Apalachee High School in Winder, Georgia, killing two teachers and two students.[400] Colin Gray's homicide liability bears an uncanny resemblance to James and Jennifer Crumbley's.

On May 21, 2023, local police interviewed Colin and Colt Gray, the video of which went viral following the Apalachee High School shooting.[401] Georgia investigators informed Colin that an IP address linked to his location was used to issue online threats to commit a

396. *Id.*

397. *Id.*

398. *Id.*

399. Tim Darnell, *Suspected Shooter's Dad Faces Unprecedented Charges*, WRDW (Sep. 12, 2024, at 13:35 ET), https://www.wrdw.com/2024/09/12/suspected-shooters-dad-faces-unprecedented-charges/ [https://perma.cc/K3VD-RMU6].

400. *Id.*

401. Erik Ortiz, *Case Against Father of Georgia School Shooting Suspect Tests the Limits of Parental Blame*, NBC NEWS (Sep. 6, 2024, at 18:07 ET), https://www.nbcnews.com/news/us-news/case-colin-gray-father-georgia-school-shooting-suspect-tests-limits-pa-rcna169906 [https://perma.cc/8Z2H-BKUB]; *see* ATLANTA NEWS FIRST, *Body Camera Footage Shows Interview of Colt, Colin Gray on 2023 School Shooting Online Threat* (YouTube, Sep. 9, 2024) [hereinafter *Gray Bodycam Footage*], https://www.youtube.com/watch?v=Cmlo0JRiy_s [https://perma.cc/Z3X3-94WU].

school shooting.[402] In the interview, Colin acknowledged that there were firearms in the house, they were accessible to Colt, and the two of them frequently went shooting together.[403] Colin also confirmed that Colt knew how to use a firearm.[404] Colin told investigators that he and Colt had just been through a highly traumatic eviction and that Colt was being bullied at school.[405]

Police also interviewed Colt in the footage, with Colin observing.[406] In the recording, Colt denied threatening to commit a shooting at the school, but said "maybe" he heard someone else say something like that.[407] Colt admitted to using Discord, the app from which the threats were issued, while he was living at the house associated with the IP address under investigation.[408] Colt also admitted that he was being bullied at his new school and that he frequently met with school counselors.[409] Seven months after this encounter, Colin bought Colt an assault rifle for Christmas.[410]

Colt was exhibiting outward signs of a mental health emergency, including homicidal ideations, leading up to and on the day of the Apalachee High School shooting.[411] Colt's mother, Marcee Gray, sought inpatient treatment for Colt the week before the shooting, and was attempting to work with Colt's school to arrange for it.[412] Regarding her son's condition, Marcee told ABC News, "My concern for him had been building."[413] Marcee told reporters that Colt had asked his father to buy him a "shooter's mask," joking that it was to

402. *Gray Bodycam Footage*, *supra* note 401, at 00:00-00:32.
403. *Id.* at 04:04-4:52.
404. *Id.* at 07:04-07:11.
405. *Id.* at 02:48-04:35, 07:29-07:47.
406. *Id.* at 08:35-12:20.
407. *Id.* at 08:43-09:01.
408. *Id.* at 09:00-09:38.
409. *Id.* at 12:24-13:20.
410. *Teen Accused in Georgia Shooting Rode to School with Assault Rifle Hidden in His Backpack, Investigators Say*, CBS NEWS (Sep. 12, 2024, at 13:39 ET) [hereinafter *Teen Accused in Georgia Shooting*], https://www.cbsnews. com/news/georgia-school-shooting-colt-gray-backpack-rifle/ [https://perma.cc/4VRL-QJ67].
411. *Id.*
412. *Id.*
413. Doug Lantz & Emily Shapiro, *Georgia School Shooting Suspect's Mom Says Son Texted Her That Morning, Saying, 'I'm Sorry'*, ABC NEWS (Sep. 10, 2024, 10:36 ET), https://abcnews.go.com/US/georgia-school-shooting-suspects-mom-son-texted-morning/story?id=113546487 [https://perma.cc/53XN-KQQJ].

"finish his school shooter outfit."[414] Colt maintained a journal that, similar to Ethan Crumbley's, depicted plans for a school shooting.[415] Colt also maintained a "shrine of sorts" in his bedroom, including fifteen photographs and news articles related to school shootings and school shooters.[416] On the morning of the shooting, Colt texted Marcee "I'm sorry" and "You're not to blame for this."[417] Marcee alleged that Colin received a similar text message fifteen minutes prior.[418] Marcee immediately called the school to warn of an "extreme emergency."[419] This was approximately thirty minutes before Colt began firing at his teachers and classmates.[420]

School officials told Marcee on the call that Colt's teacher had reported that Colt was making references to school shootings that morning.[421] A school official attempted to find Colt that morning, but accidentally mistook him for another student with the same first name.[422] By the time the school realized the mistake it was too late: Colt was in the bathroom preparing the assault rifle his father bought him for Christmas.[423] Colt emerged from the bathroom and unleashed ten to fifteen rounds, injuring nine classmates and teachers, killing four, before surrendering to school resource officers.[424]

Colin Gray was charged just two days after his son committed the shooting and murders at Apalachee High School.[425] A grand jury indicted Colin on October 17, 2024, in a twenty-nine-count

414. Tyler Fingert & Joyce Lupiani, *Shocking New Details Revealed in Hearing for Apalachee HS Shooting Suspect's Father*, FOX 5 ATLANTA (Oct. 16, 2024, at 12:19 ET), https://www.fox5atlanta.com/news/watch-colin-gray-appears-court-preliminary-hearing [https://perma.cc/5C78-NU2Q].

415. *Id.*

416. *Id.*

417. Lantz & Shapiro, *supra* note 413.

418. *Id.*

419. Emily Shapiro & Faith Abubey, *Mom of Georgia School Shooting Suspect: 'If I Could Take Their Place, I Would'*, ABC NEWS (Sep. 9, 2024, at 09:20 ET), https://abcnews.go.com/US/mom-georgia-school-shooting-suspect-place/story?id=113512097 [https://perma.cc/WLT8-7QFC]. Colt's aunt and a call log from the family cell phone plan confirmed the call and timing. *Id.*

420. *Id.*

421. *Teen Accused in Georgia Shooting*, *supra* note 410.

422. *Id.*

423. *Id.*

424. *Id.*

425. Darnell, *supra* note 399.

indictment.[426] Colin Gray's charges are arguably more serious than the Crumbleys': He is charged not just with involuntary manslaughter, but second-degree murder as well.[427] Gray's liability, like James and Jennifer Crumbley's, lies in his decision to purchase a firearm for his son despite clear signs that Colt was suffering from severe mental illness, including homicidal ideations.[428]

Of course, the Crumbley prosecution does not serve as legal precedent for charging or convicting Colin Gray, or any other parent of a school shooting suspect outside of Michigan. However, it is hard to imagine that Georgia prosecutors and police were unaware of the Crumbley conviction in charging Gray.[429] Like the Crumbleys, Colin Gray provided his son the firearm he ultimately used to murder his classmates and teachers.[430] And similar to the Crumbleys, he did so after his son displayed repeated warning signs of a deteriorating and violent mental state.[431]

A trend emerges in these cases that suggests a growing standard in parental prosecutions following a school shooting. Both the Georgia and Michigan cases contain the following relevant facts: (1) a child exhibits serious mental illness; (2) the parent provides that child a firearm; and (3) the child expresses homicidal ideations, of which the parents are alerted and fail to act.[432] I predict that when those three facts are present, parents will continue to face homicide liability following a school shooting.[433] These factors are based both on commonalities between the *Crumbley* and *Gray* cases as well as

426. Kallingal & Sayers, *supra* note 17.

427. *Id.*

428. *See* Darnell, *supra* note 399 ("Police say he knowingly allowed his son ... to have access to an AR-style rifle that was allegedly used in the deadly Apalachee High School shooting.").

429. *See id.* (quoting Professor John Acevedo's statement that "[e]ach state has its own criminal law, so the Michigan case doesn't create precedent ... [b]ut psychologically it set the precedent and opened the door for district attorneys to prosecute parents after one of these school shootings, especially when they either provided the gun or knowingly allowed the child to possess the gun").

430. *Id.*

431. *Teen Accused in Georgia Shooting*, *supra* note 410.

432. *Compare supra* Part I (detailing facts leading up to Ethan Crumbley's school shooting), *with supra* notes 399-425 and accompanying text (detailing facts leading up to Colt Gray's school shooting).

433. While a majority test for parental homicide liability following a school shooting will take time to develop, and no state will be bound by the precedent of another state's parental prosecution, these facts appear likely to generate future convictions.

the factors' parallels to medical neglect and passive abuse homicide liability.[434]

Courts considering homicide liability for the parents of a school shooter may ask whether these three relevant facts exist in terms of a test. The prongs of a test for parental homicide liability following a school shooting, then, present as follows: (1) Did the child exhibit signs of severe mental distress or illness that the parents ignored?; (2) Did the parents provide that child with a means of causing the ultimately-realized harm?; and (3) Did the parents ignore additional warnings that the child posed a danger of violence to others? I call this the *duty to prevent* test.

This three-pronged *duty to prevent* test is grounded in traditional factors incurring parental liability for both medical neglect and passive abuse. In instances of homicide by medical neglect, a child exhibits physical illness, and parents decline life-saving medical care.[435] Widespread precedent convicting parents for homicide in those circumstances indicates that parents are at least as likely to be charged and convicted in cases in which they (1) are similarly tipped off to a child's health issues (in this case, mental health), but also (2) actively procure a medium of harm for the child (in this case, a firearm),[436] and (3) ignore additional warnings (typically from school officials or law enforcement) that the child is a danger to others.[437]

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434. *See supra* Part II.

435. *See supra* note 123 and accompanying text.

436. The second prong is crucial to distinguish this mode of homicide from simple failure to predict a child's violent behavior. While the parents of school shooters frequently face signs that their child may be dangerous, it may be unreasonable for such a parent to specifically predict that their child will harm others, or to connect their failure to treat a child's mental health condition to a foreseeable third-party death. But when that parent purchases a firearm and makes it readily accessible to the child—whom they know to be suffering from violent ideations—the risk is clear, not just to their own child but to others. Purchasing the firearm also serves as an affirmative act that, arguably, requires less reliance on parental duty to incur criminal liability. Finally, parents who make a firearm accessible to their minor children violate criminal statutes in a majority of states, *see supra* note 99, and reasonably should be aware their conduct violates not just the parental duty, but a criminal statute.

437. This prong of the test will, in most instances, involve the child's *imminent* danger to others. The *Crumbley* and *Gray* cases both involved indications of serious danger directly leading up to the resultant shootings. *See* People v. Crumbley, 11 N.W.3d 576, 592-93 (Mich. Ct. App. 2023); *Teen Accused in Georgia Shooting*, *supra* note 410. Imminence may well be a strong indicator that the causal connection between parental omission and the resultant harm is strong enough for liability to attach. A child's violent ideations which do not closely relate

The *duty to prevent* test describes circumstances under which the doctrine of proximate causation would accept parental homicide liability for omissions of a parental duty leading to third-party deaths. When a parent has ignored clear signs of mental distress, provided a firearm or other weapon capable of causing death, and ignored additional warnings about a child's violent tendencies or ideations, a resulting death is foreseeable.[438]

The Crumbley convictions and Gray indictment move the ball forward to an expanded scheme of liability, albeit grounded in the same principals as traditional parental homicide prosecutions. The elements of the *duty to prevent* test encompass the same culpability embodied in historical modes of parental homicide-by-medical-neglect homicide liability.[439] Passive-abuse cases show that the parental duty can extend to preventing a third party's intervening criminal act.[440] The Crumbley parents' convictions apply those principles of liability to parental breach of duty resulting in third-party-victim deaths.[441] General principles of law, embodied by the common law parental duty and the MPC's causation discussion, allow courts to determine whether third parties are foreseeable victims whose deaths were proximately caused by breaches of parental duty.[442]

After *Crumbley*, the door was opened for other state prosecutors to pursue a similar case. It took less than one year for prosecutors in Georgia to take up the mantle in charging Colin Gray.[443] This Article's purpose is *not* to predict whether Colin Gray, specifically, will be convicted of any homicide offense. The specific prospects of that prosecution's success remain vague. Rather, in this Article, I posit that such a conviction would be consistent with the Crumbley conviction and with a century's worth of parental homicide convictions for medical neglect and passive abuse. And regardless

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to a subsequent act of violence may fail the prong. For example, parents who fail to address a singular expression of violent desire years prior to the child committing a shooting that does not resemble the prior ideation might not meet the causal requirements for homicide liabilty.

438. *See, e.g.*, *Crumbley*, 11 N.W.3d at 592-93 (describing the foreseeability of the shootings given the Crumbleys knew about Ethan's condition and access to a firearm, despite the general rule that intentional third-party conduct is unforeseeable and severs proximate causation).

439. *See supra* note 123 and accompanying text.

440. *See supra* Part II.B.

441. *See Crumbley*, 11 N.W.3d at 592-93.

442. *See supra* Part II.C.

443. Darnell, *supra* note 399.

of the outcome of the State of Georgia's case against Colin Gray, he will certainly not be the last parent indicted—nor the Crumbleys the last convicted—following a school shooting.

### *B. The Duty to Prevent Test and School Officials*

The trend of parental prosecutions following a failure of the *duty to prevent* begs the question: In what other contexts might this form of liability apply? It stands to reason that school officials will be the next to face criminal liability—and perhaps homicide liability—for failing to prevent foreseeable and preventable shootings. Oxford High School parents consulted an investigator to look into the school's failure to prevent Ethan Crumbley's crimes.[444] The investigator's nearly-six-hundred-page report outlined school officials' fault in failing to prevent the shooting.[445] School officials, similar to James and Jennifer Crumbley, were made aware of Ethan's violent drawings the morning of the shooting, failed to search his backpack, and permitted him to remain at school.[446]

The Oxford High School parents' lawsuits against the school were dismissed, and their calls for criminal liability have gone unanswered.[447] Michigan law indicates that school officials might, at least in some circumstances, owe students a duty of care that could incur criminal liability.[448] While school officials were aware that Ethan was drawing disturbing images, including those seemingly referencing a school shooting, no evidence has been

444. Ibrahim Samra, *Oxford Parents Call for School Officials to Be Criminally Charged at Public Meeting*, CBS NEWS DETROIT (Nov. 2, 2023, at 23:20 ET), https://www.cbsnews.com/detroit/news/oxford-parents-call-for-school-officials-to-be-criminally-charged-at-public-meeting/ [https://perma.cc/6FUY-TJCA].

445. DeJanay Booth-Singleton, *Independent Investigation Report Released on Oxford High School Shooting*, CBS NEWS DETROIT (Oct. 30, 2023, at 21:35 ET), https://www.cbsnews.com/detroit/news/independent-investigation-report-released-on-oxford-high-school-shooting/ [https://perma.cc/YN8B-9ADB].

446. *See Crumbley*, 11 N.W.3d at 583-85.

447. Kara Berg, *Oakland Prosecutor Says No Charges Against Oxford School Officials*, DETROIT NEWS (Mar. 15, 2024, at 21:02 ET), https://www.detroitnews.com/story/news/local/oakland-county/2024/03/15/oakland-prosecutor-wont-rule-out-charges-for-oxford-school-officials/72988084007/ [https://perma.cc/2VR6-LG6A].

448. *See, e.g.*, People v. Beardsley, 113 N.W. 1128, 1129-30 (Mich. 1907) (describing a legal duty of care in other circumstances when the party owing a duty exercises responsibility over a vulnerable party).

presented that school officials knew Ethan had access to a handgun—the second prong of the *duty to prevent* test.[449]

All the same, Ethan's counselor and other school officials allowed him to return to class after discovering his drawings.[450] This Article posits that in future cases, school official action that meets each prong of the *duty to prevent* test might incur homicide liability. For example, in the days leading up to the Oxford High School shooting, a teacher discovered Ethan shopping for ammunition.[451] Had that teacher confronted Ethan and been informed that Ethan had access to an unsecured handgun, any school official with that information might conceivably meet each element of the *duty to prevent* test because they would be aware: (1) of Ethan's unaddressed mental health issues; (2) that he had access to a means of harm; and (3) that he had expressed homicidal ideations, as confirmed by multiple witnesses who saw him shopping for bullets and drawing violent imagery related to school shootings.[452] If school officials had been in a position to search Ethan's bag or utilize other techniques to prevent firearms from entering the school, they could have incurred homicide liability for a subsequent shooting. School officials in such a case might have been able, similar to the Crumbleys, to prevent Ethan's reasonably foreseeable acts of violence.

Part III discussed Deja Taylor's conviction. Taylor was the mother of a six-year-old who shot his teacher in Newport News, Virginia.[453] Abby Zwerner, the victim-teacher, has filed a forty-million-dollar lawsuit against Richneck Elementary School's principal and other school officials.[454] Ebony Parker—an assistant principal at the school at the time of the shooting—was charged via an indictment

449. *See Crumbley*, 11 N.W.3d at 586.

450. *Id.*

451. *Id.* at 583.

452. *See id.* at 580, 582, 591-92, 596.

453. *Deja Taylor, Mother of 6-Year-Old Who Shot Virginia Teacher Abby Zwerner, Gets 2 Years in Prison for Child Neglect*, *supra* note 394.

454. *Ex-Assistant Principal Charged with Child Neglect in Case of Boy Who Shot Teacher*, NPR (Apr. 10, 2024, at 00:22 ET), https://www.npr.org/2024/04/10/1243819802/assistant-principal-charged-child-neglect [https://perma.cc/N652-Y5AP].

alleging felony child neglect.[455] Her trial has not yet occurred.[456] Parker is alleged to have ignored three separate warnings that a student at Richneck Elementary—the school in which Zwerner was shot—was carrying a firearm.[457] The shift to liability beyond parents has come, and has every reason to continue.

## CONCLUSION

James and Jennifer Crumbley's convictions may appear shocking at first. They might surprise attorneys who view homicide liability as typically requiring some type of positive action, or who view a third party's intervening criminal acts as breaking a causal chain. They might also surprise laypersons for whom school shootings have tragically become a regularity, but who have seen criminal liability limited to the shooter themselves.

Widespread and expansive parental homicide liability prior to the Oxford High School shooting provided the foundation for the Crumbley convictions. James and Jennifer Crumbley failed to address their son's mental-health needs, ultimately contributing to the murder of four children at school. Parents across the United States, in a majority of jurisdictions, have been convicted of homicide by medical neglect. Like James and Jennifer Crumbley, who did not aim a weapon or pull a trigger on November 30, 2021, those parents took no affirmative action against their children but incurred homicide liability by an omission of duty. Ethan Crumbley committed independent criminal acts in shooting his classmates and teachers, while James and Jennifer Crumbley were not physically present to prevent it. But American parents have been convicted of homicide as passive abusers in most states for failing to prevent a

455. Ben Finley & Denise Lavoie, *Former Assistant Principal Charged with Child Neglect in Case of 6-Year-Old Boy Who Shot Teacher*, AP NEWS (Apr. 9, 2024, at 18:20 ET), https://apnews.com/article/teacher-shot-virginia-principal-indicted-ebony-parker-4207c41d7cadc7ae242531017832221e [https://perma.cc/44YF-4BL3].

456. Jimmy LaRoue, *Trial for Assistant Principal in Richneck ES Shooting to Be Rescheduled*, WAVY (Apr. 25, 2025, at 04:47 ET), https://www.wavy.com/news/local-news/newport-news/trial-for-assistant-principal-in-richneck-es-shooting-to-be-rescheduled/ [https://perma.cc/7UH5-FEVE].

457. Julia Reinstein & Beatrice Peterson, *Virginia Ex-Assistant Principal Charged a Year After 6-Year-Old Shot His Teacher*, ABC NEWS (Apr. 11, 2024, at 13:36 ET), https://abcnews.go.com/US/US/virginia-assistant-principal-charged-year-after-6-year/story?id=109084407 [https://perma.cc/5P77-SZHD].

spouse or partner from killing, even when the convicted parent was not physically present.

The doctrinal components of causation and duty-omission that contributed to the Crumbleys' unprecedented conviction have deeply rooted and extensive precedent in American convictions for medical neglect and passive abuse. While James and Jennifer Crumbley were the first parents of a school shooter convicted for a homicide offense, they are not the first parents convicted following similar culpable conduct. And while the Crumbleys were the first parents convicted following a school shooting, they will likely be far from the last. Indeed, less than a year following their convictions, Colin Gray was charged with involuntary manslaughter and second-degree murder after his son killed two students and two teachers at Apalachee High School in Winder, Georgia.

Based on the history and current trends of parental homicide, I propose a three-part test for when parents might face homicide liability for failing to prevent their children from committing a school shooting. Parents are likely to face homicide liability following a school shooting when they (1) turn a deaf ear to their child's cries for mental health help; (2) provide the child a means to commit harm, typically by providing or failing to properly store a firearm; and (3) ignore additional warnings confirming their child's risk of committing violence. When a parent fails this *duty to prevent* test, they will likely face homicide liability for their child's killings. Parents may not be the only ones caught in an expanding scheme of criminal liability following a school shooting. School officials who fail to prevent foreseeable harm may also find themselves facing criminal sanctions if they meet the elements of this test.

When Oakland County prosecutors conducted their initial in-office conference following the Oxford High School shooting, lead attorney Karen McDonald asked her fellow counsel and law-enforcement officials: "What about the parents?"[458] Veteran attorneys and detectives told her "no" and "absolutely not."[459] Convicting the parents of a school shooter for a homicide offense felt, to members of her office and to many Americans, completely alien and unprecedented. Yet James and Jennifer Crumbley were convicted,

458. Cox, *supra* note 4.
459. *Id.*

and Colin Gray was charged less than a year later. In the wake of a school shooting, American prosecutors are likely to continue asking: "What about the parents?"