

COMMENT

YOUR KID, YOUR CRIME: WISCONSIN LAWS CAN PLACE PARENTS ON TRIAL FOR THEIR CHILD’S MASS SCHOOL SHOOTING

CASEY H. NEEDHAM*

The rise in school shootings across the United States has prompted prosecutors to explore new avenues of accountability. In 2024, Michigan prosecutors made history by successfully convicting the parents of a school shooter with involuntary manslaughter, marking the first such convictions in United States history. This precedent has already influenced other states, with Georgia prosecutors pursuing similar charges under their own involuntary manslaughter statutes. However, Wisconsin lacks an involuntary manslaughter statute, raising questions about how its legal framework could support parental liability in similar cases in the state.

This Comment argues that Wisconsin prosecutors can still hold parents accountable using its existing statutes, including second-degree reckless homicide and homicide by negligent handling of a dangerous weapon. By examining Michigan’s successful conviction and the developing case in Georgia, this Comment provides a roadmap for Wisconsin prosecutors seeking to navigate parental liability for school shootings.

Additionally, as Michigan’s landmark case has already influenced legislative action on safe gun storage, Georgia is finding itself at a legislative standstill with what to do. Wisconsin may similarly find itself at this crossroad in the face of its own recent mass school shooting, making it critical for prosecutors and legislatures to focus on two important factors when taking legal action: whether a parent provides their child with an unsecured firearm and whether the parent is aware of their child’s mental health challenges. Finally, Wisconsin law offers alternative statutory mechanisms with lesser penalties, such as contributing to the delinquency of a child and two firearm-related offenses. The successful application of these laws would reinforce the expectation that parents must secure firearms in their homes or face legal consequences.

Introduction	1614
I. Parental Civil Liability in Wisconsin.....	1618
A. Parental Duty to Control Children	1620

* J.D. Candidate, University of Wisconsin Law School, 2026. I am beyond grateful to my sister, Patricia Needham—J.D. Candidate, University of Wisconsin Law School, 2026—for her constant encouragement, endless patience, and generous advice. I am deeply thankful for Madison H. Polack, a Senior Managing Editor and my dear friend, whose editorial guidance and direction shaped this Comment. Finally, I want to recognize my sister Kate, who gave me the confidence to write this Comment, and my parents, whose unconditional support has made every step of this journey possible.

B.	Parental Monetary Liability	1621
C.	Public Policy Is Unlikely to Preclude Parental Liability in Failure to Control Claims	1622
II.	Wisconsin's Homicide Statutes.....	1623
III.	The <i>Crumbley</i> and <i>Gray</i> Cases: A New Path for Parental Liability.....	1626
A.	Michigan Law: Involuntary Manslaughter	1627
1.	<i>People v. Crumbley</i>	1628
B.	Georgia Law: Involuntary Manslaughter.....	1631
1.	<i>State v. Gray</i>	1632
IV.	Mental Health and Gun Access: Two Important Considerations Before Charging Parents	1635
A.	Child Gun Access.....	1636
B.	Mental Health	1638
V.	Wisconsin's Homicide Statutes Allow for Parental Criminal Liability for Their Children's School Shootings.....	1639
A.	Second-Degree Reckless Homicide	1640
1.	Parental Duty to Control One's Child Must Be Adopted by the Court.....	1641
2.	The Crumbleys' Liability Under Second-Degree Reckless Homicide	1643
B.	Homicide by Negligent Handling of a Dangerous Weapon.....	1646
1.	The Crumbleys' Liability Under Homicide by Negligent Handling of a Dangerous Weapon.....	1647
VI.	Other Statutory Mechanisms for Criminal Liability	1649
A.	Contributing to the Delinquency of a Child.....	1649
B.	The Firearm Statutes	1651
	Conclusion	1653

INTRODUCTION

Before 2024, no parent in the United States had ever been charged with homicide for a mass school shooting committed by their child.¹ This changed in 2024 when the parents of Ethan Crumbley, Jennifer and James Crumbley (the “Crumbleys”), became the first parents to be convicted for a mass shooting that their child committed.² Based on a

1. Stephanie Desmon, *What the Conviction of a Parent of a School Shooter Could Mean*, JOHN HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (Mar. 1, 2024), <https://publichealth.jhu.edu/2024/the-conviction-of-a-parent-of-a-school-shooter-and-gun-violence-laws> [https://perma.cc/N8SU-95RE].

2. Erik Ortiz & Corky Siemaszko, *Crumbley Convictions Set a Legal Precedent for Parents that Could Reach Beyond Shootings*, NBC NEWS (Mar. 16, 2024, at 06:00 CT), <https://www.nbcnews.com/news/us-news/crumbley-convictions-set-legal-precedent-parents-reach-shootings-rcna143571> [https://perma.cc/D4YK-NG5U].

theory of gross negligence, Jennifer and James were found guilty under Michigan's involuntary manslaughter statute, setting new precedent and shaping the outlook for future parental convictions in other jurisdictions.³

From a legal standpoint, it has always been possible for states to find parents criminally liable for the crimes committed by their children through two avenues: parental responsibility statutes and various homicide theories.⁴ But society has been reluctant to criminally charge parents because it does not want to criminalize bad parenting,⁵ and there is a societal rule "that one person is [generally] not liable for the acts of another."⁶ However, with the uptick in school shootings in recent years,⁷ the public is crying out for more accountability. Even the students themselves are calling for parents to be held accountable.⁸

In Michigan and Georgia, prosecutors have taken matters into their own hands by criminally charging parents for the mass murders committed by their children. Using its involuntary manslaughter statutes, Michigan has successfully convicted (and Georgia is currently trying to convict) a school shooters' parents of involuntary manslaughter.⁹ Although Michigan and Georgia are setting a newfound precedent for

3. See *id.*; Thaddeus Hoffmeister, 'Gross Negligence': Why a Parent like James Crumbley Can Be Found Guilty for Their Child's Crimes, CONVERSATION (Apr. 10, 2024, at 10:02 ET), <https://theconversation.com/gross-negligence-why-a-parent-like-james-crumbley-can-be-found-guilty-for-their-childs-crimes-225836> [<https://perma.cc/NA3Y-VQ9W>].

4. Lisa Lockwood, Comment, *Where Are the Parents? Parental Criminal Responsibility for the Acts of Children*, 30 GOLDEN GATE U. L. REV. 497, 507 (2000).

5. *Id.* at 549 (expressing that, in some jurisdictions with parental responsibility statutes, the state fails to charge parents under the statutes due to a public perception that instead of criminalizing a parent's explicit actions or omissions that lead to their child's wrongful actions, they are placing penalties on parents for their bad parenting style).

6. Danielle Braff, *Why Parents Are Being Punished for the Crimes of Their Children*, A.B.A. J. (July 2, 2024, at 14:52 CT), <https://www.abajournal.com/web/article/punishing-parents-for-the-crimes-of-their-children> [<https://perma.cc/26NH-H76X>].

7. *School Shootings & Youth Mental Health*, WIS. OFF. OF CHILD.'S MENTAL HEALTH (Apr. 2024), https://children.wi.gov/Documents/ResearchData/OCMH%20Fact%20Sheet_April%202024_School%20Shootings.pdf [<https://perma.cc/A49H-UDZX>] ("School shootings in the U.S. are now at their highest recorded levels.").

8. See *Student Voice: Where Students Stand on Gun Violence and Charging Parents of Shooters (Part Two)*, PBS (Oct. 8, 2024, at 14:50 CT), <https://www.pbs.org/newshour/classroom/classroom-voices/student-voices/2024/10/teens-on-school-shootings-and-charging-parents-with-crimes-part-two> [<https://perma.cc/P5AD-6WPC>] (noting that some students are calling for the conviction of parents); *Student Voice: Where Students Stand on Gun Violence and Charging Parents of Shooters*, PBS (Sep. 6, 2024, at 10:50 CT), <https://www.pbs.org/newshour/classroom/classroom-voices/student-voices/2024/08/teens-on-school-shootings-and-charging-parents-with-crimes> [<https://perma.cc/C6N5-HC87>] (noting that some students are calling for parents to be responsible for their guns around their children).

9. See *infra* Part III.

convicting parents this way, other states may not have an “involuntary manslaughter” statute. Wisconsin is one of those states.

Wisconsin had twenty-seven school incidents involving guns between 1970 and 2022.¹⁰ The Wisconsin Office of Children’s Mental Health reported that more than half of these shootings occurred over the last eight years.¹¹ Not included in this data, however, is Wisconsin’s most recent and deadliest school shooting yet. On December 16, 2024, a fifteen-year-old student entered Abundant Life Christian School in Madison, Wisconsin, and killed a student and a teacher.¹² In May 2025, Wisconsin prosecutors filed charges against Jeffrey Rupnow, the father of the school shooter.¹³ These charges include one count of contributing to the delinquency of a child and two counts of intentionally giving a dangerous weapon to a minor,¹⁴ statutorily referred to as “Possession of a dangerous weapon by a person under 18.”¹⁵ The criminal complaint revealed that the father viewed guns as a way to connect with his daughter and bought her a .22-caliber SIG Sauer handgun as a Christmas gift in 2023 and later purchased a 9-millimeter Glock for her.¹⁶ The complaint also revealed that although the daughter did not have access to the gun safe, Rupnow told his daughter that “the code to the [gun] safe was his social security number backwards” in the event of something happening to him.¹⁷ Even so, on the day before the shooting, the father took the gun out of the safe for her to clean upon the daughter’s request, but he failed

10. *School Shootings & Youth Mental Health*, *supra* note 7.

11. *Id.*

12. *Abundant Life Christian School Shooting: Facts and Questions Page*, CITY OF MADISON (Dec. 18, 2024, at 20:53 CT), <https://www.cityofmadison.com/news/2024-12-18/abundant-life-christian-school-shooting-facts-and-questions-page> [<https://perma.cc/9XGL-KZCR>].

13. Todd Richmond, *Judge Orders Abundant Life Shooter’s Father to Stand Trial*, PBS WIS. (July 24, 2025), <https://pbswisconsin.org/news-item/judge-orders-abundant-life-shooters-father-to-stand-trial/> [<https://perma.cc/97KL-4EWP>] (disclosing that the court, in Rupnow’s preliminary hearing in July, rejected the defense’s argument that the father “didn’t know [his daughter] was considering violence and didn’t physically hand her the weapons at the school”).

14. *Id.*; Criminal Complaint at 1–2, *State v. Rupnow*, No. 2025CF001093 (Dane Cnty. Cir. Ct. Wis. May 7, 2025).

15. WIS. STAT. § 948.60(2)(b) (2023–24).

16. Criminal Complaint, *supra* note 14, at 18–19 (reporting that the father shared with detectives that his daughter had taken a safety course about guns, and he felt that he did not “need[] to babysit her with this”).

17. *Id.* at 8, 17, 19. The father told the detective that he “thought locking [his] guns in the safe was enough as a parent, you should change the code to the safe as much as you change your online passwords. Every 60-90 days, kids are smart and they will figure it out.” *Id.* at 17.

to check if she had returned it to the safe before locking the safe up.¹⁸ Additionally, the complaint alleges that although the shooter did not have a diagnosed mental illness, she had a “history of suicidal ideations” and received therapy for it, but was later unenrolled due to her lack of issues.¹⁹ Lastly, the complaint revealed that the father said, “I believe anytime I saw anything that was alarming or disturbing for [my daughter] I was proactive as I could be for everything.”²⁰

Beyond utilizing the state’s current firearm and crimes against children statutes to place a parent on the hook for their child’s criminal actions, what can prosecutors charge if the specific facts underlying a parent’s involvement in a school shooting are especially heinous? If the specific facts underlying a parent’s actions and inactions surrounding a mass school shooting committed by their minor child are egregious enough, Wisconsin’s homicide statutes are a mechanism to place additional criminal liability on the parents. These homicide theories include second-degree reckless homicide and homicide by negligent handling of a dangerous weapon.

Part I will analyze the common law history of holding parents civilly liable for the acts of their children in Wisconsin. Then, Part II will provide an overview of Wisconsin’s homicide statutes. Next, Part III will discuss the new precedent in Michigan governing parental criminal liability for the mass school shootings committed by children. Specifically, it will look at Michigan law and how the court analyzed the case facts leading to the first-ever conviction of this type of crime. Additionally, this Part will analyze the recent school shooting in Georgia and discuss how Georgia prosecutors are using this precedent to try and hold a parent liable under its state laws. Part IV will discuss the importance of two essential factors at play surrounding cases of mass shootings: mental health and gun access. This discussion will reveal why prosecutors should consider the evidence behind these factors before criminally charging parents. Part V will argue that Wisconsin can hold parents criminally liable for the mass killings of their children under its second-degree homicide statute or its homicide by negligent handling of a dangerous weapon statute. However, if the facts of a particular shooting do not meet the elements under either homicide statute, Part VI discusses mechanisms that carry lesser penalties compared to the homicide statutes that Wisconsin already has in place to charge a parent, such as the charges brought against the father of the Abundant Life Christian School

18. *Id.* at 7, 19 (unveiling that the daughter was typically made responsible for retrieving the guns and ammunition from the safe for trips to the gun range and for returning them to the safe afterwards).

19. *Id.* at 8, 20.

20. *Id.* at 21.

shooter.²¹ This Comment urges Wisconsin prosecutors to consider these mechanisms when a school shooting takes place and highlights that by doing so, Wisconsin parents will be more aware of the criminal consequences of disregarding gun safety around children, which will potentially limit a child's access to firearms, and hopefully prevent another mass tragedy.

I. PARENTAL CIVIL LIABILITY IN WISCONSIN

Under common law, parents were typically not held responsible for the wrongful actions of their children, and there was no basis for liability simply because of a parent-child relationship,²² but rather the children themselves were personally responsible.²³ However, this responsibility became a pitfall to justice, as children typically could not financially compensate their victims for their tortious conduct, and thus, the law needed to adapt.²⁴ The evolution of tort law made it possible for parents to be held civilly responsible for the acts of their children in four general situations:

(1) *Where the parent negligently entrusts the child with an instrumentality which may become a source of danger to others*; (2) *where the child is acting as the parent's agent*; (3) *where the parent knows of the child's wrongdoing and consents to it or directs or sanctions it*; and (4) *where the parent who has the ability to control the child fails to exercise control over the child, although the parent knows, or should know, that injury to another is a probable consequence*.²⁵

To invoke civil liability against a parent for their child's actions, one must bring a claim of negligence.²⁶ To establish a claim of negligence in

21. This Article was drafted before the recent charges were filed against Jeffrey Rupnow in Wisconsin. Before these charges, no parent had been charged with these crimes for a child's mass school shooting in Wisconsin. The discussion that follows proceeds on the basis that these statutes are relevant to prosecutors after a school shooting, providing a basis under the law to charge these crimes. Leaving out the analysis of these statutes would hinder a comprehensive statutory framework available to Wisconsin prosecutors in their charging decisions.

22. W. PAGE KEETON, DAN B. DOBBS, ROBERT E. KEETON & DAVID G. OWEN, PROSSER & KEETON ON THE LAW OF TORTS § 123, at 913 (5th ed. 1984).

23. Robert Charles Levine, Note, *Parental Liability for the Torts of Their Minor Children: Limits, Logic & Legality*, 9 NOVA L.J. 205, 205 (1984).

24. KEETON, DOBBS, KEETON & OWEN, *supra* note 22, § 123, at 913.

25. Wis JI-Civil 1013 (emphasis added); *see* KEETON, DOBBS, KEETON & OWEN, *supra* note 22, § 123, at 913-15.

26. *See* Lockwood, *supra* note 4, at 506-07 ("A person who is responsible for the death of another may be liable under civil law, criminal law, or both."); *cf.* 8A FED.

Wisconsin, one must prove that (1) the defendant had a duty of care, (2) the defendant breached that duty, (3) a causal connection existed between the defendant's breach and the plaintiff's injury, and (4) the plaintiff's injury resulted in actual loss or damage.²⁷ The first element is based on the principle that everyone is under a duty to exercise ordinary care in all activities.²⁸ To establish a duty of care, it must be "foreseeable to the defendant that his or her act or omission to act might cause harm to some other person."²⁹ To establish the second element, the critical question is whether the act or failure to act was consistent with the duty to exercise ordinary (*i.e.*, reasonable) care.³⁰ If not, then a breach of that duty is established.³¹ The third element requires a causal connection between the breach and injury; cause is tested by asking "whether the defendant's negligence was a substantial factor in producing the injury,"³² not whether the negligent conduct was the sole or primary factor.³³ The fourth element requires the plaintiff to show that he or she suffered an actual loss or damage that resulted from the alleged breach, injuring them.³⁴

For example, parental civil liability (also known as parental negligence) can be found when "a parent negligently entrusts a child with an instrumentality which may become a source of danger to others."³⁵ In *Hopkins v. Droppers*,³⁶ the Wisconsin Supreme Court "recognized the general rule that some form of *participation by a parent* in respect to a tort of a minor child is an essential predicate for parental liability."³⁷ These negligent claims have commonly been used to hold parents

PROC., L. ED. § 22:405, Westlaw (updated Nov. 2025) (pointing out that criminal and civil liability may result from the same act or omission).

27. *E.g.*, *Gritzner v. Michael R.*, 2000 WI 68, ¶ 19, 611 N.W.2d 906, 912; *Nieuwendorp v. Am. Fam. Ins. Co.*, 529 N.W.2d 594, 599 (Wis. 1995).

28. *Gritzner*, 2000 WI 68, ¶ 20; *see Rockweit by Donohue v. Senecal*, 541 N.W.2d 742, 747 (Wis. 1995).

29. *Gritzner*, 2000 WI 68, ¶ 20.

30. *See id.* ¶ 25.

31. *See id.* ¶ 22 ("A person is not using ordinary care and is negligent, if the person, without intending to do harm, does something (or fails to do something) that a reasonable person would recognize as creating an unreasonable risk of injury or damage to a person or property." (quoting Wis JI-Civil 1005)).

32. *Clark v. Leisure Vehicles, Inc.*, 292 N.W.2d 630, 635 (Wis. 1980).

33. *Id.*

34. *Nichols v. Progressive N. Ins. Co.*, 2008 WI 20, ¶ 18, 746 N.W.2d 220, 227.

35. *Nieuwendorp v. Am. Fam. Ins. Co.*, 529 N.W.2d 594, 599 n.4 (Wis. 1995); *see supra* note 25 and accompanying text.

36. 198 N.W. 738 (Wis. 1924) (establishing the first Wisconsin case of negligent entrustment of a dangerous weapon).

37. *Nieuwendorp*, 529 N.W.2d at 599 n.4 (emphasis added); *see Hopkins*, 198 N.W. at 739.

accountable for entrusting a minor with a vehicle, not for gun use.³⁸ Even so, Wisconsin has interpreted negligent entrustment of an instrumentality to mean “an object, such as a *weapon* or vehicle, [entrusted] to a child.”³⁹

A. Parental Duty to Control Children

Under common law, parents have a special duty to control the conduct of their children.⁴⁰ A parent must exercise reasonable care to control their child so as to protect others, especially when the parent knows of the child’s dangerous tendencies.⁴¹ For example, a parent may be liable for failing to take a gun away from a child if they find him or her with it.⁴² Failure to exercise such control may result in parental liability.⁴³

Wisconsin precedent has clearly established that parents owe a duty to control their children, and failure to do so may result in parental liability. In *Seibert v. Morris*,⁴⁴ the duty to control was first recognized by the Wisconsin Supreme Court.⁴⁵ There, the court adopted the *Restatement (Second) of Torts* section 316, which states that a parent has

a duty to exercise reasonable care . . . to control [their] 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 [they] ha[ve] the ability to control [their] child, and (b) knows or should know of the necessity and opportunity for exercising such control.⁴⁶

38. See, e.g., *Bankert by Habush v. Threshermen’s Mut. Ins. Co.*, 329 N.W.2d 150, 150 (Wis. 1983); *Malone v. Gaengel*, 583 N.W.2d 882, 882 (Wis. Ct. App. 1998); *Siebert v. Wis. Am. Mut. Ins. Co.*, 2011 WI 35, ¶ 7, 797 N.W.2d 484, 485; *Kempf v. Boehrig*, 290 N.W.2d 562, 562 (Wis. Ct. App. 1980).

39. *Bankert by Habush v. Threshermen’s Mut. Ins. Co.*, 313 N.W.2d 854, 855 (Wis. Ct. App. 1981) (emphasis added), *aff’d*, 329 N.W.2d 150 (Wis. 1983).

40. KEETON, DOBBS, KEETON & OWEN, *supra* note 22, § 123, at 914.

41. *Id.* at 914–15.

42. *Id.* at 915.

43. *Id.*

44. 32 N.W.2d 239 (Wis. 1948).

45. See *id.* at 240.

46. *Id.*; Wisconsin jury instructions restate the standard as follows: A parent must use ordinary care to control (his) (her) minor child so as to prevent the child from intentionally harming others or from conducting (himself) (herself) so as to create an unreasonable risk or bodily harm to others, if the parent knows or should know:

- (1) that (he) (she) has the ability to control the child;
- (2) that there is a necessity for exercising such control; and
- (3) that there is an opportunity to do it.

Parental liability does not exist *unless* the parent has some sort of notice of a specific type of harmful conduct and must also have an opportunity to interfere with that conduct.⁴⁷ Thus, if a parents fails to control their child under their duty which leads to their child committing a tortious action, civil liability can be placed on the parent in Wisconsin.

It is important to understand the distinction between a claim against a parent for breaching their duty to control their child and a claim against a parent for negligent entrustment of a dangerous weapon (discussed previously in Part I), because both claims can “generally involve children improperly using an instrumentality which can be dangerous.”⁴⁸ Negligent entrustment claims require “that the instrumentality be ‘entrusted’ to the entrustee.”⁴⁹ Whereas failure to control claims may require “the failure to exercise ordinary care in allowing the instrumentality to be in the hands of a child, or it may be a failure in other respects, *e.g.*, failure to properly instruct in use or a failure to warn of hazards.”⁵⁰ Although both claims could be brought against a parent for the same incident, proving the elements of each claim may require a showing of different facts on how the incident came about.

B. Parental Monetary Liability

Under common law, negligent actions of children were normally uncompensated because the children themselves were held responsible for their own torts, not the parents, and likely had no money to compensate the victims.⁵¹ As common law evolved to address this problem, virtually all states created statutes that impose liability on the parents.⁵² Wisconsin was one of the states to recognize parental civil liability through statute but only in the form of monetary compensation to the victims.⁵³

The Wisconsin State Legislature created the “Parental liability for acts of [a] minor child” statute to create absolute liability on parents.⁵⁴ Specifically, parents of minors are monetarily “liable for damages to property, for the cost of repairing or replacing property or removing the marking, drawing, writing, or etching from property . . . , for the value

Wis II–Civil 1013.

47. *Nielsen v. Spencer*, 2005 WI App 207, ¶ 14, 704 N.W.2d 390, 395; KEETON, DOBBS, KEETON & OWEN, *supra* note 22, § 123, at 915.

48. Wis II–Civil 1013; *Bankert by Habush v. Threshermen’s Mut. Ins. Co.*, 329 N.W.2d 150, 153 (Wis. 1983).

49. Wis II–Civil 1013; *Bankert by Habush*, 329 N.W.2d at 153.

50. Wis II–Civil 1013; *Bankert by Habush*, 329 N.W.2d at 153–54.

51. KEETON, DOBBS, KEETON & OWEN, *supra* note 22, § 123, at 913.

52. *Id.*

53. *See* WIS. STAT. § 895.035 (2023–24).

54. *See id.*

of unrecovered stolen property, or *for personal injury* attributable to a willful, malicious, or wanton act of the child.”⁵⁵ The statute also makes a parent jointly and severally liable for damages resulting from their minor child’s violation of the relevant retail theft statute.⁵⁶ The ceiling of recovery a victim could collect under this statute is capped at \$5,000 in damages, with an exception existing for recovery in cases of retail theft.⁵⁷ Notably, the Wisconsin Supreme Court has concluded that the legislature intended for this statute to hold parents monetarily liable up to the maximum amount for each individual act of the child.⁵⁸

Overall, there are mechanisms in place in Wisconsin to hold parents civilly accountable for their child’s negligent conduct, especially when that conduct results in bodily harm to another. Nevertheless, when a child’s tortious actions become so intentional and severe that parental negligence is a contributing factor, criminal liability should be an option for Wisconsin prosecutors to consider. It should especially be an option when people’s lives have tragically ended as a result. Further, based on common law precedent establishing parental liability for their child’s negligent conduct in civil cases, the same reasoning should be extended to criminal contexts to account for a parent’s involvement in their child’s criminal conduct.

C. Public Policy is Unlikely to Preclude Parental Liability in Failure to Control Claims

Even if a breach of parental duty is established in a claim of negligence, public policy reasons may preclude imposition of liability for negligent conduct in certain civil cases.⁵⁹ These reasons include:

- (1) the injury is too remote from the negligence, (2) the injury is too wholly out of proportion to the tortfeasor’s culpability, (3) in retrospect it appears too highly extraordinary that the negligence should have resulted in the harm, (4) allowing recovery would place too unreasonable a burden on the tortfeasor, (5) allowing recovery would be too likely to open

55. § 895.035(2)(a) (emphasis added).

56. § 895.035(2)(b); *see also* WIS. STAT. §§ 943.50, 943.51 (2023–24) (setting forth the retail theft statute and its corresponding civil penalties).

57. § 895.035(4).

58. *See, e.g., N.E.M. by Kryshak v. Strigel*, 559 N.W.2d 256, 257 (Wis. 1997) (holding that the defendants’ parental liability under section 895.035(4) is “\$2,500 for each of the 20 instances of sexual conduct” committed by their son).

59. *Gritzner v. Michael R.*, 2000 WI 68, ¶ 26, 611 N.W.2d 906, 913.

the way for fraudulent claims, and (6) allowing recovery would enter a field that has no sensible or just stopping point.⁶⁰

The court determines whether any of the listed public policy reasons precludes parental liability, but only if there is no distinct basis for holding that person liable. Parental duties, like the duty to warn, have broad grounds for imposing liability.⁶¹ As a result, duty to warn claims are unlikely to proceed to trial, as public policy is likely to prohibit them.⁶² Specifically, allowing a duty to warn claim to proceed to trial would impose “liability with no definable and sensible starting or stopping point.”⁶³ This is unlikely the case in negligent failure to control claims, which are likely to proceed to trial. The Wisconsin Supreme Court has held “that public policy considerations do not bar a narrowly defined claim for negligent failure to control” when finding a distinct basis for liability.⁶⁴ Parents have tried to use these public policy reasons in negligent failure to control claims, but the court ultimately allows such claims to go to trial despite them, finding a distinct basis to hold parents liable under negligent failure to control claims.⁶⁵

II. WISCONSIN’S HOMICIDE STATUTES

Wisconsin’s homicide statutes differ from other jurisdictions’ homicide statutes, including Michigan’s and Georgia’s. It is important to understand these jurisdictional differences when considering charging parents for the first time in Wisconsin. Wisconsin’s homicide statutes were revised in 1988 pursuant to an effort to clarify and codify its “law of homicide.”⁶⁶ First, Wisconsin clarified its homicide statutes by grading their culpability according to different mental states or elements, which include:

60. *Id.* ¶ 27 (citing *Rockweit by Donahue v. Senecal*, 541 N.W.2d 742, 750 (Wis. 1995)).

61. *Id.* ¶ 5; *Nichols v. Progressive N. Ins. Co.*, 2008 WI 20, ¶ 44, 746 N.W.2d 220, 223.

62. *See Gritzner*, 2000 WI 68, ¶ 5; *Nichols*, 2008 WI 20, ¶ 44.

63. *Nichols*, 2008 WI 20, ¶ 46 (citing *Gritzner*, 2000 WI 68, ¶¶ 34, 36); *see, e.g., Rockweit by Donahue*, 541 N.W.2d at 745 (finding that the defendant breached her duty to warn, but public policy precluded extending liability to her because multiple public policy factors were found).

64. *Gritzner*, 2000 WI 68, ¶ 47.

65. *Id.* ¶ 5; *Nichols*, 2008 WI 20, ¶ 44.

66. Walter Dickey, David Schultz & James L. Fullin, Jr., *The Importance of Clarity in the Law of Homicide: The Wisconsin Revision*, 1989 WIS. L. REV. 1323, 1325–26.

(1) The mental element is *intentional* when the actor has the purpose to cause death or is aware that death is practically certain to be caused by the conduct;

(2) The mental element is *aggravated recklessness* when the actor is aware that the conduct creates an unreasonable and substantial risk of death or great bodily harm to another under circumstances which show utter disregard for human life;

(3) The mental element is *simple recklessness* when the actor is aware that the conduct creates an unreasonable and substantial risk of death or great bodily harm to another;

(4) The mental element is *negligence* when the actor should realize that the conduct creates a substantial and unreasonable risk of death or great bodily harm to another.⁶⁷

Listed from most serious to least serious, the homicide statutes include first-degree intentional homicide, second-degree intentional homicide, first-degree (aggravated) reckless homicide, and second-degree (simple) reckless homicide.⁶⁸ Additionally, Wisconsin has strict liability⁶⁹ homicide statutes, including homicide by intoxicated use of a vehicle or firearm⁷⁰ and felony murder, which is committed when the actor causes the death of another while committing or attempting to commit specified crimes set by statute.⁷¹

In Wisconsin, the theory of liability attached to the crime is congruent with the mental state of the actor. For instance, if the crime is second-degree (simple) reckless homicide, the mental state is *recklessness*, which means “the actor is aware” of the specific risk they created, and the theory of liability is also *recklessness*, which means, in whole, “that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk.”⁷²

In other jurisdictions, the theory of liability may also be congruent with the mental state element but is harder to understand because the mental state is combined with the “involuntary” nature of the crime. For instance, the Michigan jury found a school shooter’s parents, the

67. *Id.* at 1330 (footnotes omitted) (grading the mental elements with respect to the seriousness of their penalties).

68. *See* WIS. STAT. §§ 940.01–.02, 940.05–.06 (2023–24). There are statutorily set mitigating factors in the first-degree homicide statute that may lessen the charge from first-degree to second-degree intentional homicide. *See* § 940.01(2).

69. *See, e.g.,* Dickey, Schultz & Fullin, Jr., *supra* note 66, at 1331 (defining strict liability as a crime that can be committed without a culpable mental state, like intent).

70. § 940.09 (2023–24).

71. § 940.03.

72. WIS. STAT. § 939.24(1) (2023–24).

Crumbleys, guilty of involuntary manslaughter based on gross negligence—the same theory that Georgia is currently trying to use to convict a parent involved in a similar mass shooting.⁷³ Here, involuntary manslaughter is defined as “the unintentional killing of another without malice *in combination with*” the specified mental state—gross negligence.⁷⁴ Involuntary is a “catch-all concept” to separate unintentional manslaughter from murder and voluntary manslaughter.⁷⁵ Thus, in Michigan, one needs to attach a mental state, such as gross negligence, to involuntary homicide, whereas in Wisconsin, one does not need to because the mental state is congruent with the designated homicide statute.

Like Michigan and Georgia, Wisconsin has homicide statutes grounded on the theory of criminal (gross) negligence.⁷⁶ Wisconsin defines criminal negligence as “ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another.”⁷⁷ Unlike Michigan and Georgia, the negligent homicide statutes in Wisconsin are divided based on the instrument used.⁷⁸ They include (1) “Homicide resulting from negligent control of vicious animal”;⁷⁹ (2) “Homicide by negligent handling of dangerous weapon, explosives, or fire”;⁸⁰ and (3) “Homicide by negligent operation of [a] vehicle.”⁸¹

Criminal (gross) negligence differs from civil (ordinary) negligence because it involves a more serious risk—that being “death or great bodily harm as opposed to simple harm.”⁸² It also differs because the risk must be more than unreasonable; it must also be substantial.⁸³ Charges under the negligent homicide statutes are easier for prosecutors to pursue compared to reckless homicide statutes because of the differences in the standards behind the mental states. Recklessness applies a subjective standard, having to prove “that the actor be subjectively aware of the

73. See *supra* note 3 and accompanying text.

74. *People v. Fredell*, No. 164098, 2024 WL 5229746, at *4–5 (Mich. Dec. 26, 2024) (emphasis added) (quoting *People v. Tims*, 534 N.W.2d 675, 680 (Mich. 1995)).

75. *Id.* at *4 (citing *People v. Holtschlag*, 684 N.W.2d 730, 734 (Mich. 2004)).

76. See *infra* Sections III.A–B. Michigan, Georgia, and Wisconsin define criminal negligence differently, but have similar characteristics. See *infra* notes 77, 96, 133 and accompanying text.

77. § 939.25(1) (2023–24).

78. Dickey, Schultz & Fullin, Jr., *supra* note 66, at 1373.

79. WIS. STAT. § 940.07 (2023–24).

80. § 940.08.

81. § 940.10.

82. Dickey, Schultz & Fullin, Jr., *supra* note 66, at 1376.

83. *Id.* at 1376–77.

risk,” whereas negligence applies an objective standard, having to prove “that the actor *should* have been aware of the risk.”⁸⁴

The causation element in Wisconsin’s homicide statutes is defined: “An actor causes death if his or her conduct is a ‘substantial factor’ in bringing about that result.”⁸⁵ Here, the causation element uses the same substantial factor test in civil and criminal proceedings.⁸⁶ For an individual to be held liable, a substantial factor does not need to be the sole or primary cause of death.⁸⁷ Even if there was an intervening cause that contributed intentionally, negligently, or wrongfully to that person’s death, the state still must prove that the actor’s actions were a substantial factor in the chain of events that led to the death of the victim.⁸⁸

III. THE *CRUMBLEY* AND *GRAY* CASES: A NEW PATH FOR PARENTAL LIABILITY

Convicting parents for their children’s murders had not been seen by criminal courts until a school shooting in Michigan prompted prosecutors to charge the shooter’s parents, thereby setting a precedent and creating a new outlook for future convictions in other jurisdictions.⁸⁹ After the parents were charged, the Michigan Court of Appeals expressed that the potential for future applications of this precedent is limited to the *unique* facts surrounding the case.⁹⁰

Despite this determination, Georgia courts are faced with an “eerily similar” set of facts⁹¹ surrounding a school shooting that occurred just five months after the convictions in Michigan.⁹² The challenge is this:

84. *Id.* at 1377 (emphasis added); *see also id.* at 1341 n.76 (“The term ‘subjective’ is used to refer to the actual mental state of the actor. It requires proof of the . . . knowledge actually held by this actor in this case.”).

85. *State v. Below*, 2011 WI App 64, ¶ 27, 799 N.W.2d 95, 101–02.

86. Wis JI–Criminal 901.

87. *Below*, 2011 WI App 64, ¶ 27.

88. *See id.* ¶ 33 (holding that although the intervening act of terminating the victim’s life support was wrongful, the chain of causation did not break following the defendant’s actions of repeatedly striking her head against a table, causing her death).

89. *See supra* note 3 and accompanying text.

90. *People v. Crumbley*, 11 N.W.3d 576, 580, 594 (Mich. Ct. App. 2023) (addressing the question of “whether there was sufficient evidence of causation to bind the defendant[s] over for trial on the charges of involuntary manslaughter” (alteration in original) (first quoting *People v. Crumbley*, 981 N.W.2d 468, 468 (Mich. 2022); and then quoting *People v. Crumbley*, 981 N.W.2d 470, 470 (Mich. 2022))).

91. Jenna Sundel & Erin Keller, *Colt Gray’s Case ‘Eerily Similar’ to Oxford HS Mass Shooter Ethan Crumbley*, NEWSWEEK (Sep. 7, 2024, at 09:42 ET), <https://www.newsweek.com/prosecutor-compares-ethan-crumbley-colt-gray-school-shooting-cases-1950021> (quoting Oakland County Prosecutor Karen McDonald).

92. John Woodrow Cox, Steven Rich & Sarah Blaskey, *In Historic Case, Father of 14-Year-Old School Shooting Suspect Charged with Murder*, WASH. POST (Sep.

Murder statutes vary across jurisdictions, requiring distinct legal analyses. This Part will discuss how Michigan secured convictions under its involuntary manslaughter statute and how the Michigan Court of Appeals upheld the prosecution's probable cause determination in *People v. Crumbley*.⁹³ Additionally, this Part will analyze how Georgia's involuntary manslaughter statute may lead to a conviction in a current Georgia case that has yet to be argued before the court. Finally, this Part will discuss the impact of these cases within their respective jurisdictions and argue that Wisconsin prosecutors should take note when evaluating a similarly situated mass shooting case.

A. Michigan Law: Involuntary Manslaughter

Involuntary manslaughter is defined as the “unintentional killing of a person.”⁹⁴ In Michigan, involuntary manslaughter is rooted in the common law, requiring a finding of grossly negligent conduct on the part of the actor.⁹⁵ To find that the actor was grossly negligent, the jury must find that the actor: (1) “knew of the danger to another, that is, . . . knew there was a situation that required [them] to take ordinary care to avoid injuring another;” (2) “could have avoided injuring another by using ordinary care;” and (3) “failed to use ordinary care to prevent injuring another when, to a reasonable person, it must have been apparent that the result was likely to be serious injury.”⁹⁶

Prosecutors must show that the parent's grossly negligent conduct *caused* the death of the victims.⁹⁷ But how does one “cause” the death of another without pulling the trigger themselves? In Michigan, causation must be both factual and proximate.⁹⁸ Factual causation is fairly simple to establish.⁹⁹ The problem arises with proximate cause because criminal liability cannot attach when the deaths are too remote from the

6, 2024), <https://www.washingtonpost.com/investigations/2024/09/05/colin-gray-arrested-father-georgia-school-shooting-suspect/>.

93. 11 N.W.3d 576 (Mich. Ct. App. 2023).

94. *Involuntary Manslaughter*, L. DICTIONARY, <https://thelawdictionary.org/involuntary-manslaughter/> [<https://perma.cc/493L-XVNG>] (last visited Sep. 9, 2025).

95. *Gross Negligence in Michigan: A Report to the Michigan Law Revision Commission (1)*, in MICH. L. REVISION COMM'N THIRTY-FIRST ANN. REP. (1996), <https://council.legislature.mi.gov/Content/Files/mlrc/1996/gross1.htm> [<https://perma.cc/V2MR-5G9M>]

(distinguishing Michigan's involuntary manslaughter statute that is rooted in gross negligent conduct, from the negligent homicide statute, which is rooted in ordinary negligent conduct).

96. *Id.* (quoting M Crim II 16.18).

97. *See Crumbley*, 11 N.W.3d at 590–91.

98. *Id.* at 590.

99. *Id.* at 591–92 (utilizing a “but for” test to find that the child would not have killed the victims that day but for the parents' acts and omissions).

defendant's conduct.¹⁰⁰ Liability is also prevented if a superseding cause (*i.e.*, the child committing the school shooting) was not reasonably foreseeable.¹⁰¹ If not reasonably foreseeable, then the causal link between the defendant's conduct and the victim's injury breaks, leaving the defendant free from liability.¹⁰² However, if the action by a third party (*i.e.*, the child) "was reasonably foreseeable, then the defendant's conduct will be considered a proximate cause," and liability may be imposed.¹⁰³

1. *People v. Crumbley*

In 2021, the deadliest school shooting in Michigan took place.¹⁰⁴ A fifteen-year-old teenager named Ethan Crumbley shot and killed four of his fellow classmates at Oxford High School in Michigan.¹⁰⁵ Ethan's parents were the first parents to be charged and convicted in a mass school shooting committed by their child in the United States.¹⁰⁶ The Crumbleys were each charged with four counts of involuntary manslaughter based on the theory of gross negligence.¹⁰⁷

The state alleged that the parents' "grossly negligent conduct caused the deaths of the four victims" because the parents stored the firearm and its ammunition in a manner that allowed access by their minor child, *constituting a breach of the parental duty to control their child* "so as to prevent him from intentionally harming others."¹⁰⁸ Subsequently, in 2024, the Crumbleys were convicted.¹⁰⁹ Is this precedent "prosecutorial overreach," or is it simply showcasing desperate measures necessary for parents to start storing their guns safely?¹¹⁰

100. *Id.* at 590.

101. *Id.* at 591.

102. *Id.*

103. *Id.* (quoting *People v. Schaefer*, 703 N.W.2d 774, 786 (Mich. 2025)).

104. John Woodrow Cox, *Guilty: Inside the High-Risk, Historic Prosecution of a School Shooter's Parents*, WASH. POST (July 8, 2024, at 05:00 CT), <https://www.washingtonpost.com/investigations/interactive/2024/michigan-prosecutors-crumbley-parents-oxford-school-shooting/>.

105. *Id.*

106. Ed White, *Michigan School Shooter's Parents Sentenced to 10 Years in Prison for not Stopping a 'Runaway Train'*, AP (Apr. 9, 2024, at 18:55 CT), <https://apnews.com/article/james-crumbley-jennifer-crumbley-oxford-school-shooting-e5888f615c76c3b26153c34dc36d5436>.

107. *See Hoffmeister, supra* note 3.

108. *Crumbley*, 11 N.W.3d at 588. The Michigan prosecutor's argument mirrors Wisconsin's common law parental duty to control one's child. *See supra* Section I.A.

109. *See Cox, supra* note 104.

110. *Id.*

The Michigan Court of Appeals held that the jury could find beyond a reasonable doubt that the Crumbley's grossly negligent conduct *caused* the deaths of the victims based on numerous facts,¹¹¹ including:

- The parents knew that Ethan “had been repeatedly experiencing significant episodes of hallucinations and/or extreme paranoia”;
- The parents knew that Ethan “was in a distressed mental state because of the loss of his grandparent and the family dog, and the departure of his best friend”;
- Ethan realized “his poor mental state and asked [his parents] to help him obtain medical assistance”;
- The parents’ purchased a handgun for Ethan despite knowing his mental state;
- The parents kept the handgun accessible to Ethan;
- On the day prior to the shooting, Ethan was researching bullets at school; and
- On the day of the shooting, Ethan watched a video that involved a shooting and later drew pictures of a bullet, a gun resembling the gun used, “a person bleeding from bullet holes, and wrote ‘[b]lood everywhere,’ ‘[t]he thoughts won’t stop[.] [h]elp me,’ ‘[m]y life is useless,’ and ‘[t]he world is dead’” on his worksheet.¹¹²

The school also presented the parents with the modifications Ethan “made to [his] worksheet, where he clearly intended to portray a different, happier message about the school and himself.”¹¹³ More significantly, even after the school recommended—on the day of the shooting—that Ethan’s parents take him “home and get him immediate medical help,” his parents refused.¹¹⁴ Thus, the Court held that a jury could find that Ethan committing a school shooting was a reasonably foreseeable outcome of the parents’ gross negligence.¹¹⁵

The Michigan Court of Appeals expressed that in the majority of cases involving proximate cause, specifically superseding cause, the third party’s acts (*i.e.*, Ethan’s) have no connection to the defendant’s.¹¹⁶ But in this case, the Crumbleys’ “actions and inactions were [so] inexorably intertwined with [their son’s] actions” that a connection existed based on

111. *See Crumbley*, 11 N.W.3d at 593.

112. *Id.* at 592.

113. *Id.* at 592–93.

114. *Id.* at 593.

115. *Id.*

116. *Id.*

the seriousness of the facts of the case.¹¹⁷ Although the causation element was the crux of the case—because proving homicide against someone who did not pull the trigger themselves is difficult—the court determined that the parents’ negligent actions of providing their child a firearm, their inactions as on-going participant in their child’s untreated mental state, and their refusal to remove him from the school the day of the shooting, made it reasonably foreseeable to the parents that a shooting would occur.¹¹⁸ The objective standard of reasonable foreseeability is difficult to establish when a defense is that no parent could ever reasonably foresee their child committing a mass school shooting, as the court pointed out.¹¹⁹ But this case posed “uniquely troubling facts of which [his parents] were fully aware.”¹²⁰

The lead prosecutor, in announcing the charges against the Crumbleys, said that “gun ownership is a right, and with that right comes great responsibility.”¹²¹ She later expressed in her closing argument to the jury that the easiest thing the mother could have done was take Ethan out of school when asked to do so by the school, saying that “it takes the unthinkable, and she has done the unthinkable, and because of that, four kids have died.”¹²² But for the jury, the biggest factor between establishing a conviction or having a hung jury was how the child got the gun in the first place.¹²³ The prosecutor noted that it does not even take ten seconds to place a lock on a gun, showcasing the ease of keeping a gun secure from a child.¹²⁴

If the gun had been safely stored, could this tragedy have been prevented? This inquiry is especially important considering one of the factors that the court evaluated was his ease of access to a gifted gun.¹²⁵ Michigan’s legislature seemed to think so as they enacted a new gun storage law after the case went to trial, requiring all “individuals to keep unattended weapons unloaded and locked with a locking device or stored in a locked box or container if it is reasonably known that a minor is likely to be present on the premises.”¹²⁶ This law makes it a crime if an individual violates this requirement, resulting in a minor obtaining the

117. *Id.* at 594.

118. *See id.*

119. *See id.* at 594 & n.12.

120. *Id.* at 594.

121. Cox, *supra* note 104.

122. *Id.*

123. *See id.*

124. *Id.*

125. *See supra* Section III.A.1.

126. *New Gun Safety Laws to Protect Families Go into Effect February 13*, MICH. DEP’T OF HEALTH & HUM. SERVS. (Feb. 8, 2024) [hereinafter *New Gun Safety Laws*], <https://www.michigan.gov/mdhhs/inside-mdhhs/newsroom/2024/02/08/firearms-laws> [<https://perma.cc/TH2H-NA2D>].

firearm of which the child exhibits in public or “in the presence of another person in a careless, reckless or threatening manner,” or discharges it causing injury or death to themselves or another.¹²⁷ It seems as though the tragedy that took place at Oxford High School prompted the Michigan legislature to act, creating gun storage laws that some people may not agree with.

The owner of a firearm academy in Michigan stated that he opposed this new law, but he also said that “every responsible adult should keep their firearm secured and away from unauthorized users.”¹²⁸ Drawing on this, it appears that the community recognizes gun ownership as a constitutional right while also acknowledging that keeping firearms stored away from children is common sense. In light of this constitutional right and the extreme parental failure to control children—especially children struggling with mental health—the Michigan legislature correctly made it more difficult for a child to gain access to a firearm. In conjunction with the decision of prosecutors to charge parents and the decision of a jury to convict, the Michigan legislature sent a clear message to negligent parents. This approach could help reduce the risk of a future school shooting in Michigan. Only time will tell.

B. Georgia Law: Involuntary Manslaughter

In Georgia, there are two types of involuntary manslaughter. The first is felony involuntary manslaughter, which is committed when the actor “causes the death of another . . . without any intention to do so by the commission of an unlawful act other than a felony.”¹²⁹ The second is misdemeanor involuntary manslaughter, which is committed by “a lawful act in an unlawful manner likely to cause death or great bodily harm.”¹³⁰ The two are distinguishable from one another. Felony involuntary manslaughter results from a *reckless act*, while misdemeanor involuntary manslaughter results from *criminal negligence*.¹³¹ A reckless act is one where “a person must ‘consciously disregard[] a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of [another] person.’”¹³² On the other hand, criminal negligence is something more than ordinary negligence; it is “an act or failure to act

127. *Id.*

128. Gus Burns, *New Gun Law Might Have Deterred Michigan School Shooting -- Had It Been in Place*, MLIVE (Mar. 12, 2024, at 15:58 CT), <https://www.mlive.com/news/2024/03/new-gun-law-might-have-deterred-michigan-school-shooting-had-it-been-in-place.html> [https://perma.cc/95P4-Y8D9].

129. GA. CODE ANN. § 16-5-3(a) (2024).

130. *McIver v. State*, 875 S.E.2d 810, 819 (Ga. 2022) (quoting § 16-5-3(b)).

131. *Id.* at 819.

132. *Id.* at 827 (alterations in original) (quoting § 16-5-60(b)(2)).

which demonstrates a willful, wanton, or reckless disregard for the safety of others who might reasonably be expected to be injured thereby.”¹³³

When deciding if a defendant is entitled to the misdemeanor involuntary manslaughter jury instruction, the evidence of the actor’s conduct will determine if the defendant qualifies.¹³⁴ If the evidence shows that the conduct was unlawful, the actor is not entitled to such jury instruction.¹³⁵ However, if there is slight evidence showing a “conflict as to whether the fatal act was unlawful or merely rose to the level of criminal negligence,” the actor is entitled to have the jury receive the misdemeanor involuntary manslaughter instruction.¹³⁶

In determining the causation element, Georgia uses a “proximate cause” standard like Michigan.¹³⁷ “Proximate causation imposes liability for the reasonably foreseeable results” of a person’s conduct, provided there is no independent and unforeseen intervening cause.¹³⁸ For a conviction of involuntary manslaughter, death cannot be due to an independent intervening cause in which the actor was not involved in and could not have foreseen.¹³⁹

1. *State v. Gray*

Just five months after the Crumbleys’ convictions in Michigan, Georgia was faced with an “eerily similar” story¹⁴⁰ surrounding its “deadliest school shooting” in state history.¹⁴¹ A fourteen-year-old boy, Colt Gray, shot and killed two students and two teachers at Apalachee High School.¹⁴² The shooter’s father, Colin Gray, was indicted, in relevant part, with involuntary manslaughter.¹⁴³ Similar to the

133. *Id.* (quoting § 16-2-1(b)).

134. *Id.* at 829.

135. *Id.*

136. *Id.*

137. *State v. Jackson*, 697 S.E.2d 757, 759 (Ga. 2010); see *supra* Section III.A.

138. *Jackson*, 697 S.E.2d at 763.

139. *Fair v. State*, 155 S.E. 329, 332 (Ga. 1930) (citing *Carbo v. State*, 62 S.E. 140, 140 (Ga. Ct. App. 1908)).

140. Cox, Rich & Blaskey, *supra* note 92.

141. Anna Schecter, *Chilling Drawings in Notebook of Alleged Georgia School Shooter Revealed in Court Hearing for Father Colin Gray*, CBS NEWS (Oct. 16, 2024, at 16:42 ET), <https://www.cbsnews.com/news/georgia-apalachee-school-shooter-court-hearing-father-colin-gray/> [https://perma.cc/72FK-3E4F].

142. Wayne Ford, *Colt Gray and Father Indicted in Deadly Attack at Apalachee High School in Winder*, ONLINEATHENS (Oct. 17, 2024, at 17:40 ET), <https://www.onlineathens.com/story/news/crime/2024/10/17/colt-gray-and-father-indicted-for-deadly-assault-at-apalachee-high/75720244007/> [https://perma.cc/A58Q-5PBC].

143. *Id.* Colin Gray was also charged with second-degree reckless homicide, see *id.*, but it will not be discussed in this Comment because it goes beyond the scope of the precedent established in Michigan.

Crumbleys, Colin bought his son a gun,¹⁴⁴ and, according to Colt's aunt, Colt was begging for mental health support for months before the shooting occurred.¹⁴⁵

In the indictment of Colin, the grand jury said that he “gave his son ‘access to a firearm and ammunition after receiving sufficient warning that Colt Gray would endanger the bodily safety of another,’ calling it ‘a substantial and unjustifiable risk.’”¹⁴⁶ Colin purchased the gun used in the school shooting—an AR-15-style rifle—for Colt as a Christmas present just seven months after law enforcement questioned the family over online threats Colt made “to commit a school shooting.”¹⁴⁷ In addition, the father received a note from his son on the day of the shooting asking for his father's forgiveness.¹⁴⁸ The father's awareness of his son's previous online threats of mass shootings could reasonably lead prosecutors to believe that the father knew or should have known that gifting his son a gun might lead him to commit a shooting, especially having knowledge of his son's poor mental state. Accordingly, if the father read the contents of his son's letter prior to the shooting, this fact could enhance the argument that the father was aware of the risk posed by his son having a gun, leading to a mass school shooting at the hands of his son.

These facts could establish felony involuntary manslaughter.¹⁴⁹ What could make it felony involuntary manslaughter in Georgia is that it is illegal to “intentionally, knowingly, or recklessly . . . sell or furnish a pistol or revolver to a minor.”¹⁵⁰ In this case, Colin Gray furnished his

144. Andy Rose & Devon M. Sayers, *Father of Alleged Georgia School Shooter Pleads Not Guilty to Charges that He Shares Responsibility for Killings*, CNN (Nov. 21, 2024, at 10:59 ET), <https://www.cnn.com/2024/11/21/us/colin-gray-georgia-school-shooting/index.html> [<https://perma.cc/X95H-N9TM>].

145. Sarah Blaskey & Holly Bailey, *Georgia School-Shooting Suspect Struggled with Mental Health, Aunt Says*, WASH. POST (Sep. 5, 2024), <https://www.washingtonpost.com/nation/2024/09/05/suspected-shooter-georgia-school-shooting-apalachee-high/>.

146. Rose & Sayers, *supra* note 144.

147. *Id.*

148. Devon M. Sayers, *Father of Georgia School Shooter Had Letter from Son ‘Asking for Forgiveness’ on Day of the Shooting, Testimony Reveals*, CNN (Aug. 1, 2025, at 15:46 ET), <https://www.cnn.com/2025/08/01/us/colin-gray-trial-testimony-georgia-shooting>.

149. *See supra* Section III.B.

150. GA. CODE ANN. § 16-11-101.1(b) (2025); *see also* Clark Merrefield, *Do Child Access Prevention Laws Prevent Gun Violence? Here's What the Research Says*, JOURNALIST'S RES. (Oct. 2, 2024), <https://journalistsresource.org/health/child-access-prevention-research/> [<https://perma.cc/A5HF-BURT>] (clarifying that Georgia's current gun laws do not provide a secure storage requirement while referencing a national survey stating that approximately “3 in 4 Americans support safe storage policies, including 57% of gun owners”).

minor son a firearm.¹⁵¹ However, this may result in a misdemeanor involuntary manslaughter conviction because Georgia law does not place restrictions on how guns shall be kept or locked, and the law also does not apply to a rifle, which was the type of firearm used in the shooting.¹⁵² Nonetheless, it will be left for a jury to decide if Colin caused the deaths of the victims in order to establish, at the very least, misdemeanor involuntary manslaughter.

Although the case has yet to go to trial, the family members of many victims spoke out at Colin Gray's bond hearing, requesting that the judge not grant him bond.¹⁵³ These family members represent the wishes of the community: hold negligent parents liable.¹⁵⁴

The *Gray* and *Crumbley* cases should "serve as a wake-up call to gun owners that they need to secure their weapons in the home,"¹⁵⁵ especially if the legislature has not made gun storage laws in that jurisdiction, like Georgia¹⁵⁶ and pre-*Crumbley* Michigan.¹⁵⁷ After the school shooting, Georgia lawmakers gathered to discuss potential policies related to gun safety and storage.¹⁵⁸ One Georgia lawmaker suggested that action be taken but that the focus be on mental health, not guns.¹⁵⁹ Now, prosecutors are stepping up to create a solution in which these lawmakers are hesitant to address. The solution is to charge parents for their children's mass murders when the criminal conduct is severely egregious—gun-owning parents who knowingly provide their mentally ill children with firearms and do nothing to help prevent a subsequent school shooting.

151. See *supra* note 144 and accompanying text.

152. See *id.*

153. *Bond Granted for Father of Suspected Apalachee High School Shooter*, ATLANTA NEWS FIRST (Feb. 11, 2025, at 15:30 CT), <https://www.atlantaneewsfirst.com/2025/02/11/stream-live-bond-hearing-underway-father-accused-apalachee-high-shooter/> [https://perma.cc/LT56-CQLA].

154. See *supra* note 8 and accompanying text.

155. Rich McKay, *Charges Against Father of Georgia Shooting Suspect Test Emerging Legal Strategy*, REUTERS (Sep. 6, 2024, at 23:41 CT), <https://www.reuters.com/world/us/teen-suspected-georgia-school-shooting-appear-court-2024-09-06/> [https://perma.cc/HG7C-S93T].

156. See David A. Lieb, *Georgia School Shooting Stirs Debate About Safe Storage Laws for Guns*, AP NEWS (Sep. 6, 2024, at 08:21 CT), <https://apnews.com/article/georgia-school-shooting-gun-laws-cbcf464d68dcf8266c6a40d84d7176c5>.

157. See *New Gun Safety Laws*, *supra* note 126.

158. Lieb, *supra* note 156.

159. *Id.*

IV. MENTAL HEALTH AND GUN ACCESS: TWO IMPORTANT CONSIDERATIONS BEFORE CHARGING PARENTS

The debate surrounding gun control and mental health care has dominated the media for a very long time, especially right after a school shooting occurs. This prompts society to point fingers at their state legislature and at the federal government, calling for action. On the left side of the ideological spectrum, Democrats seem to further the argument that restricting gun possession among the American people will decrease mass shootings. In contrast, on the right side, Republicans seem to dismiss gun regulation in furtherance of their Second Amendment right and shift the attention on mental health care access.

Interestingly enough, both sides seem to favor restricting gun ownership from people with mental health issues.¹⁶⁰ However, state legislatures, comprised of members of both these political parties, are struggling with what to do¹⁶¹ and, for the most part, have done nothing, staying in the shadows until time moves a particular mass tragedy out of their state's mind and onto another's. Without their help, it is now time for the judiciary and executive officers to get involved—with Michigan beginning this push by placing criminal manslaughter charges on parents.¹⁶²

The *Crumbley* and *Gray* cases involve two common, significant factors that prosecutors must consider when looking at the parents for liability: (1) a parent gave their child an unsecured firearm, while (2) having the knowledge that their child had mental health issues. These two factors must be viewed as a whole, because if one fails, criminal homicide charges may lack the heightened facts necessary for a parental liability argument. It is also important to inquire as to what the parents did and did not do because if they did nothing as to these factors, their culpability is greater. This Part will discuss why these factors are important for prosecutors and state legislatures to consider. Specifically, it will address the ongoing debate between gun control and mental health, which has hindered lawmakers from creating restrictions. Furthermore, it will explore how this inaction is causing state prosecutors to take matters into their own hands. Lastly, this Part will clarify which assumptions should be disregarded in discussions about mass shootings.

160. *Gun Violence Widely Viewed as a Major – and Growing – National Problem*, PEW RSCH. CTR. (June 28, 2023), <https://www.pewresearch.org/politics/2023/06/28/americans-views-of-specific-gun-policy-proposals/> (reporting that a survey found that 88 percent of Republicans and 89 percent of Democrats supported banning gun sales to individuals with mental illnesses).

161. See Lieb, *supra* note 156.

162. See *supra* Section III.A.

A. Child Gun Access

The first inquiry that prosecutors should evaluate before charging a parent in connection with a school shooting is how the child received the firearm. Roughly 74 percent of school shooters acquired the firearm used in the shooting from the home of a parent or close relative.¹⁶³ In fact, a targeted school violence study performed by the U.S. Secret Service revealed that in close to half of the studied shootings from 2008 to 2017, “the firearm was easily accessible or was not stored securely.”¹⁶⁴ Law enforcement officers, as part of their investigations, generally inquire as to how a school shooter obtained the weapon and from where.¹⁶⁵ But, this information is rarely released to the public.¹⁶⁶ Even more concerning, the parent is rarely ever convicted of any crime for failing to secure their firearm at home after a harmful incident takes place.¹⁶⁷

While the debate over gun control turns on gun ownership, we should instead shift the focus to gun possession. It is federally illegal for a firearm licensee to sell any gun to a person under the age of eighteen.¹⁶⁸ Furthermore, it is illegal for a firearm licensee to sell a handgun to a person under the age of twenty-one.¹⁶⁹ Additionally, between 1970 and 2020, the majority of school shootings were on average committed by persons seventeen years of age, with the second highest number of these school shootings being committed by persons sixteen years of age.¹⁷⁰ Thus, a majority of school shootings are committed by minors who legally cannot purchase any type of gun. What minors *can* do is obtain an unsecured firearm from their parents’ homes or possess it through their parents’ negligent decision to “gift” their child a gun.¹⁷¹ While it is important to address that “many firearm owners look after their guns

163. Patrick Carter, *Most School Shooters Get Guns from Home – and More Weapons are There Since the Pandemic*, MICH. MED. (Dec. 2, 2021, at 18:00 CT), <https://www.michiganmedicine.org/health-lab/most-school-shooters-get-guns-home-and-more-weapons-are-there-pandemic>; see *How To Stop Shootings and Gun Violence in Schools: A Plan to Keep Students Safe*, EVERYTOWN (Aug. 19, 2022) [hereinafter *How to Stop Shootings*], <https://everytownresearch.org/report/how-to-stop-shootings-and-gun-violence-in-schools/> [https://perma.cc/7N54-TDPQ].

164. *How to Stop Shootings*, *supra* note 163.

165. *Id.*

166. *Id.*

167. See Cox, *supra* note 104.

168. 18 U.S.C. § 922(b)(1).

169. *Id.*

170. *Number of K-12 School Shootings in the United States from 1970 to June 16, 2020, by Age of Shooter*, STATISTA (Aug. 12, 2024), <https://www.statista.com/statistics/971544/number-k-12-school-shootings-us-age-shooter/> [https://perma.cc/3AWX-HNX3].

171. See *supra* Section III.A.1.

responsibly by maintaining them locked, unloaded and inaccessible” to minors, access to these firearms is the largest contributor to the problem.¹⁷² Where it starts is in the home.

Either as a response to mass shootings or as a preventative measure, legislatures should turn their focus to gun storage laws when children are likely to be present. Michigan’s enactment of their safe storage law did not restrict an adult’s access to purchase firearms under their constitutional right to bear arms.¹⁷³ Nor did it take firearms away from any citizen. What it did do was *heighten the awareness* that parents must keep their firearms out of the hands of children who may use them unlawfully.¹⁷⁴

State legislatures retain the authority to create certain laws under the Tenth Amendment—deriving from their police powers.¹⁷⁵ Under their police powers, states may regulate individual conduct that affects protected rights,¹⁷⁶ like those within the Bill of Rights, so long as they promote the public welfare.¹⁷⁷ Specifically, the right to bear arms under the Second Amendment is allocated to the states from the Fourteenth Amendment.¹⁷⁸ Based on these unmovable principles, while states have significant regulatory powers over the Second Amendment, they cannot enact laws that render the Second Amendment’s right to bear arms clause and other constitutional protections invalid.¹⁷⁹ Thus, the argument that gun regulation is wrong because it will infinitely restrict gun access to adults is without merit.

Gun regulation, in the context of Michigan’s gun storage law, simply places a limitation to help keep guns out of the hands of children.

172. Carter, *supra* note 163.

173. See *New Gun Safety Laws*, *supra* note 126.

174. See *id.*

175. See *New York v. United States*, 505 U.S. 144, 157 (1992) (confirming that the Tenth Amendment reserves the power not delegated to the federal government to the states in some circumstances); see also *Bond v. United States*, 572 U.S. 844, 854 (2014) (emphasizing that states have police powers that give them “broad authority to enact legislation for the public good” which the federal government does not possess).

176. See Randy E. Barnett, *The Proper Scope of the Police Power*, 79 NOTRE DAME L. REV. 429, 483 (2004).

177. See Brian W. Ohm, *Some Modern Day Musings on the Police Power*, 47 URB. LAW. 625, 631–32, 641 (2015) (illustrating that, while state police powers generally refer to “the power to protect public health, safety, morals, and general welfare,” its scope is broader than that).

178. *McDonald v. City of Chicago*, 561 U.S. 742, 750, 767–778 (2010) (holding that the Second Amendment right to keep and bear arms is “fully applicable to the States” by virtue of Fourteenth Amendment).

179. See *id.* at 786, 790–91 (affirming the issue that states cannot ban fundamental rights, like the right to bear arms, despite previous decisions upholding the regulation of guns when it comes to felony possession, firearms in places like schools, and the qualifications for the sale of firearms); *cf.* U.S. CONST. art. VI, cl. 2 (“Th[e] Constitution . . . shall be the supreme Law of the Land . . .”).

Guns in the hands of children are dangerous, and laws regulating and placing safety limitations on child gun access would be beneficial to a safer society where our children can go to school without the risk of death or great bodily harm. However, this is not to dispose of the common, societal uses of weapons that may involve their use by children. For example, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has made it clear that, by a parent or guardian's written consent, a juvenile who is less than eighteen years of age may possess a handgun but may do so only for limited reasons such as "employment, ranching, farming, target practice or hunting."¹⁸⁰

B. Mental Health

The second inquiry prosecutors should consider is whether the parents had knowledge of their child's mental health issues and, in connection with the first inquiry, knowingly allowed the child to have easy access to a firearm. Not all school shooters have diagnosed mental illnesses,¹⁸¹ making it slightly more difficult for the state to argue that a parent had knowledge or were aware of their child's poor mental state. Furthermore, not all school shooters exhibit a tendency to pursue mass violence before committing a mass murder.¹⁸² Nonetheless, a child exhibiting a mental illness that elicits aggressive desires to harm others, or a child's outright showing of violent behavior, is important when looking into a parent's involvement. It is already well established that an unsecured firearm poses significant risks when children are living in the home.¹⁸³ But what if that child makes outward expressions of a desire to commit mass violence? A reasonable thing a parent would do is help their child receive some sort of mental health support. Even more reasonably, a parent would secure their firearm or even remove that firearm from the home.

One way to look at this problem would be to take guns away from negligent parents, but that is easier said than done and could restrict the

180. *May a Parent or Guardian Purchase Firearms or Ammunition as a Gift for a Juvenile (Less than 18 Years of Age?)*, ATF (Jan. 30, 2020), <https://www.atf.gov/firearms/qa/may-parent-or-guardian-purchase-firearms-or-ammunition-gift-juvenile-less-18-years-age> [<https://perma.cc/7VHM-RZ4Q>].

181. *Is There a Link Between Mental Health and Mass Shootings?*, COLUMBIA UNIV. DEP'T OF PSYCHIATRY (July 6, 2022), <https://www.columbiapsychiatry.org/news/mass-shootings-and-mental-illness> [<https://perma.cc/54A9-C3GL>].

182. See J. Thomas Sullivan, *Mass Shootings, Mental "Illness," and Tarasoff*, 82 U. PITT. L. REV. 685, 774 (2021) (arguing that it is simply not the case that a person's "dangerousness or articulated threats to commit acts of violence materializes in acts of physical violence committed against third persons").

183. Megan M. Attridge et al., *Adverse Childhood Experiences, Child Behavioral Health Needs, and Family Characteristics Associated with the Presence of a Firearm in the Home: A Survey of Parents in Chicago*, INJ. EPIDEMIOLOGY, 2023, at 2.

mass shooting argument to a limitless scope. It would be near impossible to regulate this idea because there is no objective standard of what constitutes “bad parenting” or what defines bad parenting because it is subjective; what may be bad parenting to some is not bad to others. The other way to look at it would be to hold parents accountable for their negligent actions and inactions involving their children. Here, a parent would be put in a position, based on their special relationship, to control their child by watching out for signs of foreseeable harm. Thus, prosecutors cannot ignore the fact that a parent had knowledge of their child’s mental illness or desire to harm others and thereafter did nothing to seek treatment or prevent their child from accessing a firearm in the home.

These two inquiries are both essential for prosecutors to examine and for legislatures to consider when discussing parental involvement and crafting regulations. Without the Crumbleys and Colin Gray purchasing their children a firearm and providing access to that firearm, despite knowing they were mentally ill and exhibiting signs of foreseeable violence—and doing nothing to address their mental health or gun access—the potential for these children to commit mass violence could have been limited.

V. WISCONSIN’S HOMICIDE STATUTES ALLOW FOR PARENTAL CRIMINAL LIABILITY FOR THEIR CHILDREN’S SCHOOL SHOOTINGS

In both the Michigan and Georgia cases, the prosecutors charged the parents with involuntary manslaughter.¹⁸⁴ Wisconsin does not have an involuntary manslaughter statute.¹⁸⁵ However, Wisconsin does have many mechanisms under its laws in which parents can be held liable for the murders committed by their children. This Part will first analyze Wisconsin’s second-degree reckless homicide statute and explain how this statute parallels those in Michigan and Georgia, offering a step-by-step guide for prosecutors to prove each element of the crime.¹⁸⁶ Additionally, this Part will urge the court to recognize the parental duty to control in the criminal context, providing justifiable grounds for attaching criminal liability to the parent.

Next, this Part will argue that Wisconsin prosecutors should consider bringing charges under a different homicide statute, such as homicide by negligent handling of a dangerous weapon, either as an

184. See *supra* Sections III.A.1, III.B.1.

185. See WIS. STAT. §§ 940.01–.16 (2023–24).

186. This Comment will not argue for charging first-degree reckless homicide due to the added element that the death be caused “under circumstances which show utter disregard for human life,” which is difficult to prove and thus unlikely to be charged. See § 940.02(1).

alternative to or as a lesser-included offense to second-degree reckless homicide. This Part will also examine how to apply this statute to similar situations under Wisconsin law, as it has never been argued before. Additionally, this Part will discuss other relevant statutes, including contributing to the delinquency of a child and Wisconsin's relevant firearm statutes, specifically "Leaving or storing a loaded firearm within the reach or easy access of a child" and "Possession of a dangerous weapon by a person under 18." Finally, this Part will analyze the legal basis underlying these statutes, providing an overview of the statutes' importance in holding parents responsible for their involvement in their child's commission of a school shooting. Whether these statutes should be charged at all or together with second-degree reckless homicide is up to prosecutors to decide based on the egregiousness of the parent's acts and omissions.

A. Second-Degree Reckless Homicide

Wisconsin can hold parents criminally liable under its second-degree reckless homicide statute. While the decision to charge parents under this statute should be treated delicately, Wisconsin should pursue charges when the circumstances are egregious—similar to the actions and inactions of the Crumbleys in Michigan and Colin Gray in Georgia. In such cases, prosecutors should proceed under the second-degree reckless homicide statute.

A person is guilty of second-degree reckless homicide if they "recklessly cause[] the death of another human being."¹⁸⁷ Recklessness means that the "actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk."¹⁸⁸ In sum, the state is required to prove the following three elements:

- First, the reckless nature of the conduct. The actor creates an unreasonable and substantial risk of death or *great bodily harm* . . . to another human being.
- Second, the actor's subjective mental state. The actor was subjectively aware of the risk.
- Third, the harm caused by the actor. The actor caused the death of another.¹⁸⁹

For the state to be successful, it must prove beyond a reasonable doubt that the shooter's parents engaged in all elements of second-degree

187. § 940.06(1).

188. WIS. STAT. § 939.24(1) (2023–24).

189. *State v. Neumann*, 2013 WI 58, ¶ 66, 832 N.W.2d 560, 580.

reckless homicide.¹⁹⁰ All three elements turn on the facts of the case presented. Despite this, the third element of causation will be a particular challenge for the state to prove because it has not yet been argued that the crime of second-degree homicide attaches to a parent vicariously. Thus, causation must be analyzed first to establish the state's ability to bring this crime under Wisconsin law. In turn, this Part will demonstrate how Wisconsin can argue that causation should attach based on Wisconsin law and precedent. Lastly, this Part will analyze how the state can prove each element compared to the facts of the Crumbleys' conviction.

1. Parental Duty to Control One's Child Must Be Adopted by the Court

The causation element for criminal law is the same as in tort law, requiring a substantial factor.¹⁹¹ In the homicide context, "cause" means that the actor's *conduct* "was a substantial factor in producing the death" of another.¹⁹² Importantly, "[a] 'substantial factor' need not be the sole cause of death."¹⁹³ And *conduct* "can be either by an act" (not having to be attached by a duty) or by an omission (a failure to act), when the actor "has a duty to act."¹⁹⁴ Thus, to determine the third element of causation, Wisconsin prosecutors will have to argue that the parent had a duty to act, since criminal liability can only attach if a parent's failure to act breached their legal duty. Although challenging, the alternative would be to argue that the parent's direct actions caused the death of the victims. This argument should be avoided as the sole basis for liability, as it will be immensely difficult to argue because the parents did not directly commit the shooting themselves, gun in hand. Despite this difficulty, it would be best to argue that both the actions and omissions of the parents caused the death of the victims, as Michigan did, to paint a broad picture of the parents' conduct spanning the period before the shooting took place.

Although proving a legal duty is not an element of second-degree reckless homicide, case law demonstrates that it becomes one. In *State v. Neumann*,¹⁹⁵ the Wisconsin Supreme Court held that a parent's omission or failure to act "may constitute an element of the crime, even

190. See, e.g., *Dostal v. Strand*, 2023 WI 6, ¶ 28, 984 N.W.2d 382, 389.

191. Wis II-Criminal 901.

192. *Neumann*, 2013 WI 58, ¶ 90.

193. *State v. Oimen*, 516 N.W.2d 399, 404–05 (Wis. 1994).

194. *Neumann*, 2013 WI 58, ¶ 90; see also *State v. Williquette*, 385 N.W.2d 145, 151 (Wis. 1986) (holding that "[o]missions are as capable of producing consequences as overt acts"); Dickey, Schultz & Fullin, Jr., *supra* note 66, at 1329 ("An act is generally regarded as a willed muscular movement, though an omission may satisfy this requirement if there is a legal duty to act and the actor fails to perform it.").

195. 2013 WI 58, 832 N.W.2d 560.

when the criminal statute is silent regarding omissions.”¹⁹⁶ The Court thus had to find whether a parent had a duty to act to hold that a parent’s omission made them liable for second-degree reckless homicide. Expanding this holding to parental liability for their child’s murders, one such duty to act should be that of controlling one’s child.¹⁹⁷

Breach of the parental duty to control one’s child in light of the causation element would be a case of first impression in Wisconsin. However, evaluating it would not be an impossible task. When analyzing this element, the court should treat it the same as any duty based on a special relationship. In *Neumann*, the court asked whether criminal liability under Wisconsin’s second-degree reckless homicide statute attached to a parent who failed to provide their child medical care, ultimately killing her.¹⁹⁸ To answer this question, the court had to first determine if the parent had a special duty to their child.¹⁹⁹ If not, no criminal liability could attach because not having a duty to act would break the causation element.²⁰⁰ The court reasoned that even though there is

no statute describing the legal duty a parent owes to a child for medical care, there are plenty of statutes that “are replete with provisions imposing responsibility on parents for the care of their children.”²⁰¹ Based on this reasoning, the court imposed a parental duty to protect and even created a new parental duty—to provide medical care—in light of the second-degree reckless homicide statute.²⁰²

Just as the Wisconsin Supreme Court in *Neumann* recognized a parental duty to protect—reasoning that Wisconsin statutes are full of provisions imposing parental responsibility for their children—Wisconsin courts should similarly impose the parental duty to control based on this reasoning. In considering the imposition of the parental duty to control one’s child, there are plenty of state statutes specifically mentioned in this Comment that impose such a duty. For instance, the parental liability statute imposes civil penalties on the parent for a child’s acts which include personal injury to another human being;²⁰³ the firearm statute makes it a misdemeanor for a parent to recklessly store a loaded firearm that a child obtains and discharges, causing bodily harm to another;²⁰⁴ and the contributing to the delinquency of a child statute imposes

196. *Id.* ¶ 110 (addressing the court opinion in *Williquette*, which established that parental duty to act is essential in a parent-child relationship).

197. *See supra* Section I.A.

198. *See Neumann*, 2013 WI 58, ¶¶ 82, 95.

199. *See id.* ¶¶ 105, 110.

200. *See id.* ¶ 99.

201. *Id.* ¶ 104.

202. *Id.* ¶ 111.

203. *See supra* Section I.B.

204. *See infra* Section VI.B.

penalties on the parent for contributing to their child's delinquency by disregarding the child's welfare based on multiple criminal actions.²⁰⁵ Furthermore, a parental duty to control is prevalent among Wisconsin tort law cases as a leading claim for parental negligence.²⁰⁶ Thus, Wisconsin courts, using the same analysis, would be justified in placing a duty to control on the parent when analyzing liability under its second-degree reckless homicide statute.

One obstacle to this analysis is that public policy traditionally imposes no duty to protect others, narrowing the scope for criminal liability.²⁰⁷ However, in *State v. Williquette*,²⁰⁸ the Wisconsin Supreme Court found that although Wisconsin generally does not impose a duty to protect others, "social policy *may* impose a duty" on the part of the parent to protect their child given the special nature of their relationship.²⁰⁹ Using an example, the court reasoned that even in cases of omission, a parent who fails to take any action to stop others who are inflicting abuse on their child, which establishes a breach of their duty to protect, can be prosecuted.²¹⁰ Thus, the special nature of the parent-child relationship is an exception to the common law "no duty to act" rule, "retain[ing] liability for some omissions, which are considered morally unacceptable."²¹¹ Thus, analogous to the court's reasoning, the imposition of a parental duty, like a duty to control one's child, should not negate the common law duty rule when a special relationship exists and where the omission is morally unacceptable. Overall, a duty based on a special relationship, like the duty to control, should be treated similarly to the duty to protect rule in which it supersedes the general no duty to protect others rule.

2. The Crumbleys' Liability Under Second-Degree Reckless Homicide

To apply the statutory requirements of second-degree reckless homicide to a parent, the *Crumbley* case should be examined. Under the first requirement, that is, the reckless nature of the conduct, recklessness "means that the actor create[d] an unreasonable and substantial risk of death or great bodily harm."²¹² In this case, the Crumbleys gifted their child a gun, the mother calling it "his new Xmas present" in an Instagram

205. See *infra* Section VI.A.

206. See *supra* Section I.A.

207. *State v. Williquette*, 385 N.W.2d 145, 151 (Wis. 1986).

208. 385 N.W.2d 145 (Wis. 1986).

209. *Id.* at 152 (emphasis added).

210. *Id.*

211. *Id.* at 151.

212. WIS. STAT. § 939.24(1) (2023–24).

post,²¹³ and also failed to secure the gun which left it accessible to him.²¹⁴ Given their child's mental condition, the Crumbleys also knew it was possible that their son might use it unlawfully.²¹⁵ This was especially conceivable given the fact that on the morning of the shooting, Ethan Crumbley's parents knew that he drew horrific depictions of a gun with a person bleeding from a gunshot wound and was also caught watching a shooting video in school—yet the parents did nothing about it.²¹⁶ The parents also repeatedly failed to render Ethan help concerning his mental health issues, laughing in their child's face when he pleaded to them for help.²¹⁷ A jury presented with these facts could find beyond a reasonable doubt that Ethan's parents, by their actions and omissions, created an unreasonable and substantial risk of death or great bodily harm.

Under the second requirement, the actor's subjective mental state, "the defendant must actually (in her own mind) be aware of the risk created by the conduct."²¹⁸ Parents who knowingly provide a gun to a person that is, for one, a child, and two, evincing mental health issues, can create a risk of their child using that gun to harm others. To a reasonable juror, these may be the only factors needed to establish the subjective mental state. However, the Crumbleys' actions went beyond this. The Michigan Court of Appeals revealed that more factors pointed to the parents' knowledge, including that they were aware that their child had been "repeatedly experiencing significant episodes of hallucinations and/or extreme paranoia," knew that he was in a "distressed mental state" due to the loss of his grandparent, the family dog, and the departure of his best friend, and were directly aware of his "poor mental state" because their son asked them for medical and mental help,²¹⁹ which the parents failed to provide.²²⁰ Despite their awareness of his mental state, "they purchased him a handgun that was readily accessible to him."²²¹ Furthermore, on the day of the shooting, the parents were informed in person that their son was drawing violent pictures and phrases on his worksheets.²²² The most disturbing piece of evidence came after the shooting; once the parents were notified of the shooting, the mother texted her son saying, "don't do it."²²³ Under Wisconsin law, a

213. *People v. Crumbley*, 11 N.W.3d 576, 582 (Mich. Ct. App. 2023).

214. *Id.* at 593.

215. *Id.*

216. *Id.* at 592–93.

217. *Id.* at 581.

218. *State v. Neumann*, 2013 WI 58, ¶ 74 n.43, 832 N.W.2d 560, 581–82 n.43 (quoting Dickey, Schultz & Fullin, Jr., *supra* note 66, at 1352).

219. *Crumbley*, 11 N.W.3d at 592.

220. *Id.* at 593.

221. *Id.* at 592.

222. *Id.* at 592–93.

223. *Id.* at 587.

jury could find beyond a reasonable doubt, based on the evidence presented, that the parents were aware of the risk their son posed to others based on their failure to act.

Under the third requirement, the actor must “cause[] the death of another human being.”²²⁴ *Cause* exists when the actor’s “conduct was a substantial factor in producing the death,”²²⁵ not needing to be the sole cause of death.²²⁶ And *conduct* can be from a failure to act when attached to a legal duty, or it can be by an overt action.²²⁷ Here, the parents’ failure to act (omission) comes from their *legal duty to control their child*.²²⁸

In relation to the facts in *Crumbley*, a jury could find beyond a reasonable doubt that these actions and/or omissions caused the deaths of the victims. The Michigan Court of Appeals found that despite the parents’ knowledge, or awareness, of the facts (previously discussed), they did nothing to take him out of school or seek immediate medical help when they were given the option to by the school officials.²²⁹ Nor did they tell school officials of his mental health issues when deciding to keep him in school after viewing his violent drawings.²³⁰ Nor did they tell the school about his access to a gun, just like the one depicted in his drawings.²³¹ Nor did the parents ask their child if he had the gun with him, or look in his backpack.²³² Nor did they go home to see if the gun was still there.²³³

These considerations all ruled out Ethan’s intervening acts as a superseding cause of the killings, and thus, the court determined that a jury could find that the parents were a cause of the victims’ deaths.²³⁴ In Wisconsin, a jury could similarly find that these extreme omissions to act breached their parental duty to control. Furthermore, a jury could find that these omissions, together with the act of giving their child a gun, were substantial factors in causing the deaths of the victims. The prosecution in the *Crumbley* case filed the complaint on grounds that the parents were grossly negligent by failing to control their child, breaching

224. WIS. STAT. § 940.02(1) (2023–24).

225. *State v. Neumann*, 2013 WI 58, ¶ 90, 832 N.W.2d 560, 585.

226. *State v. Oimen*, 516 N.W.2d 399, 404–05 (Wis. 1994).

227. *See Neumann*, 2013 WI 58, ¶ 90; *State v. Williquette*, 385 N.W.2d 145, 151 (Wis. 1986); Dickey, Schultz & Fullin, Jr., *supra* note 66, at 1329.

228. *See supra* Section I.A; *supra* note 108 and accompanying text (arguing that the Crumbleys were liable for breaching their duty to control).

229. *People v. Crumbley*, 11 N.W.2d 576, 593 (Mich. Ct. App. 2023).

230. *Id.* at 593.

231. *Id.*

232. *Id.*

233. *Id.*

234. *See id.* (reasoning that it was foreseeable to the parents that their grossly negligent actions would lead their child to commit a mass school shooting).

their parental duty.²³⁵ Specifically, the complaint alleged that the parents “fail[ed] to exercise reasonable care to control his or her minor child so as to prevent him from intentionally harming others.”²³⁶ This is exactly the common law parental duty to control used in Wisconsin tort law.²³⁷ Therefore, in a similarly situated case, a Wisconsin jury could find that the parents caused the death of the victims, and ultimately find beyond a reasonable doubt the parents guilty of second-degree reckless homicide.

B. Homicide by Negligent Handling of a Dangerous Weapon

If the state fails to meet its burden of proof in establishing the crime of second-degree reckless homicide, the prosecution may still bring the lesser-included offense of homicide by negligent handling of a dangerous weapon.²³⁸ However, charging parents under this statute by making parents vicariously liable for the mass shootings committed by their child would again be a case of first impression by the Wisconsin courts. Wisconsin law makes an actor guilty of a felony for “caus[ing] the death of another human being by the negligent operation or handling of a dangerous weapon.”²³⁹ Dangerous weapons include knives, firearms, air guns, and bows and arrows.²⁴⁰ To establish this crime, the prosecution must prove beyond a reasonable doubt that (1) the defendant *operated or handled* a dangerous weapon (2) in a manner constituting criminal negligence (3) which caused the death of another human being.²⁴¹

The first element will be the most difficult element to prove, which may cause prosecutors to be hesitant about using this statute to hold parents vicariously liable. This is because the state will have to show that the parents, as opposed to the minor, operated or handled the gun. “Handled” should be the approach used by the state because not only is it disjunctive, meaning one does not have to prove operation,²⁴² but it is also simpler to prove in the vicarious liability context under Wisconsin case law.

The Wisconsin legislature has not developed a definition for the word “handling” as used in the relevant statute.²⁴³ Wisconsin case law, on the other hand, expands on its meaning. In *State v. Bodoh*,²⁴⁴ the

235. *See id.* at 588.

236. *Id.*

237. *See supra* Section I.A.

238. *See State v. Langlois*, 2018 WI 73, ¶ 23, 913 N.W.2d 812, 819–20.

239. WIS. STAT. § 940.08(1) (2023–24).

240. § 940.08 (Judicial Counsel Note, 1988).

241. *Id.* (citing *Langlois*, 2018 WI 73, ¶ 57).

242. *See State v. Bodoh*, 595 N.W.2d 330, 336 (Wis. 1999).

243. *Id.*

244. 595 N.W.2d 330 (Wis. 1999).

defendant was charged with negligent handling of a dangerous weapon when his two Rottweiler dogs attacked a boy riding his bike.²⁴⁵ The Wisconsin Supreme Court adopted the definition of “handle” from *The American Heritage Dictionary of the English Language*, which defines handle as “[t]o operate with the hands; manipulate;” and “[t]o deal with or have responsibility for; conduct.”²⁴⁶ The defendant argued that he did not “handle” the dogs because he was *not physically present* to “handle” the dogs.²⁴⁷ However, the court rejected this argument, holding that in order to “handle” a dangerous weapon, the defendant does not have to be physically present at the time of the incident to have “handled” it.²⁴⁸ Because the defendant “was responsible for supervising, directing, and controlling his dogs,” even though he was not present, he clearly “handled” them.²⁴⁹ Although this case involved the negligent handling of a dangerous weapon statute, not the homicide by handling of a dangerous weapon statute, it was nonetheless adopted by the Wisconsin Court of Appeals to interpret the homicide statute in *State v. Wirth*.²⁵⁰

In *Wirth*, the Wisconsin Court of Appeals (in an unpublished opinion) used *Bodoh*’s definition to define “handle” when analyzing the homicide by negligent handling of a dangerous weapon statute.²⁵¹ The court noted that under the first element of the homicide statute—the defendant operated or handled a dangerous weapon—the definition of operated or handled should be taken from the Wisconsin Supreme Court in *Bodoh*.²⁵² Thus, the Wisconsin Supreme Court’s definition of, and reasoning behind, “handle” is applied to Wisconsin’s homicide by negligent handling of a dangerous weapon statute, and should be applied when it comes to parental liability. In this way, a parent could be held liable even though they did not physically use the gun at the time of the school shooting.

1. The Crumbleys’ Liability Under Homicide by Negligent Handling of a Dangerous Weapon

The Crumbleys could be charged under Wisconsin’s homicide by negligent handling of a dangerous weapon statute. First, the Crumbleys handled a dangerous weapon. Using the definition adopted in *Bodoh*,

245. *Id.* at 332.

246. *Id.* at 336 (quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 819 (3d ed. 1992)).

247. *Id.* at 335–36.

248. *Id.* at 336.

249. *Id.*

250. No. 2012AP208–CR, 2013 WL 627241 (Wis. Ct. App. Feb. 21, 2013).

251. *Id.* at *3 n.1.

252. *Id.*

“[t]o deal with or have responsibility for; conduct,”²⁵³ the Crumbleys clearly handled the gun. The father bought the gun because “he wanted to purchase a 9-millimeter SIG Sauer handgun,” which came with a trigger lock, a cable lock, and an ATF Youth Handgun Notice Act pamphlet.²⁵⁴ The pamphlet warns purchasers that it is a federal offense to transfer a gun to a juvenile and provides a warning to safely secure and store firearms away from children.²⁵⁵ He also signed a form stipulating that it is illegal to purchase a gun for another person.²⁵⁶ These facts together indicate that the father had possessory rights to the gun, making him, the parent, the one responsible for the handling of the dangerous weapon. Additionally, one does not need to be physically present at the incident to “handle” a dangerous weapon.²⁵⁷ Thus, a jury could find beyond a reasonable doubt that the Crumbleys handled a dangerous weapon.

Second, the Crumbleys acted in a negligent manner, causing the death of the victims. In determining whether there was negligence, intent of the actor is not a factor.²⁵⁸ Because criminal negligence consists of conduct that the actor *should* realize creates a substantial and unreasonable risk of death or great bodily harm, the inquiry must turn on “whether a reasonable person, under the same or similar circumstances, would realize that the conduct creates a substantial and unreasonable risk of death or great bodily harm.”²⁵⁹ A reasonable person should realize that gifting a firearm to a child who knowingly evinces mental health issues, and simultaneously keeping that gun accessible to him, would create a risk that the child may commit a school shooting. This risk is further established when the parent knows of the child’s concerning behavior on the day of the shooting and fails to take the child out of school at the school’s request.²⁶⁰ And thus, a jury could find beyond a reasonable doubt that the parents acted in a criminally negligent manner, causing the death of the victims.

The causation element also goes through the same analysis set forth in second-degree reckless homicide when looking at the parents’ failure

253. *Bodoh*, 595 N.W.2d at 336 (quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 819 (3d ed. 1992)).

254. *People v. Crumbley*, 11 N.W.3d 576, 582 (Mich. Ct. App. 2023).

255. BUREAU OF ALCOHOL, TOBACCO, FIREARMS & EXPLOSIVES, U.S. DEP’T OF JUST., YOUTH HANDGUN SAFETY ACT NOTICE (2017), <https://www.atf.gov/firearms/docs/guide/atf-i-53002-%E2%80%94-youth-handgun-safety-act-notice/download> [<https://perma.cc/DGY4-XTQ9>].

256. *Crumbley*, 11 N.W.3d at 582.

257. *Bodoh*, 595 N.W.2d at 336.

258. *State v. Lindvig*, 555 N.W.2d 197, 199 (Wis. Ct. App. 1996).

259. *Id.*; see WIS. STAT. § 939.25(1) (2023–24).

260. See *supra* notes 229–233 and accompanying text.

to control their child.²⁶¹ Using that same factual analysis, a jury could find beyond a reasonable doubt that the Crumbleys caused the deaths. Additionally, the evidence of the parents' overt actions can also be enough to establish the causation element alone within this statute, and an inquiry into parental duty may not even be necessary for the state. Overall, once causation is established based on the facts, a jury could find the Crumbleys guilty of homicide by negligent handling of a dangerous weapon beyond a reasonable doubt.

VI. OTHER STATUTORY MECHANISMS FOR CRIMINAL LIABILITY

If Wisconsin prosecutors decide that a case does not meet the evidentiary support for charging a parent with second-degree reckless homicide or homicide by negligent handling of a dangerous weapon, there are other statutory mechanisms to hold parents liable that have similar or less serious penalties. These options include the contributing to the delinquency of a child statute and two firearm statutes. This Part will address the basis under the law for charging each mechanism, highlighting their importance should a prosecutor not charge under the homicide theories, similar to Wisconsin prosecutor's recent decision to charge the father of the Abundant Life Christian School shooter. Even if the shooter's parents have committed some act and/or omission that helps lead the child to commit mass killings, inquiring into how the child received the gun and collecting evidence therefrom may justify only having to charge under these less serious crimes. This Part will also argue that utilizing these mechanisms will put parents on notice that they must act in accordance with their duty to control their child and, more importantly, store their guns safely, especially when a parent knowingly lives with a child with mental health issues.

A. Contributing to the Delinquency of a Child

Wisconsin prosecutors can and should consider Wisconsin Statutes section 948.40, titled "Contributing to the delinquency of a child," as a means, or as an alternative, to charge a parent for the murders committed by their child. The statute should be considered not only after a school shooting takes place, but also when the child uses a gun in furtherance of other criminal activity. The statute criminalizes two circumstances. First, it is a crime for anyone to "intentionally encourage or contribute to the delinquency of a child."²⁶² Second, it is a crime for those

261. See *supra* Section V.A.2. (establishing the causation element within the *Crumbley* facts).

262. WIS. STAT. § 948.40(1) (2023–24).

responsible for the child's welfare, like parents, to contribute to their child's delinquency by disregarding the welfare of their child.²⁶³

Delinquency means "any violation of state criminal law by a child."²⁶⁴ This statute "proscribes contributing to the delinquency of any child under the age of 18."²⁶⁵ It also makes clear that the acts of a child under the age of ten are considered delinquent even when those same acts are committed by a child older than the age of ten.²⁶⁶ Thus, the legislature wants to note that there is no exception given the young age of a child; if the acts would be considered delinquent for a child over the age of ten, then they are also applicable to a child under the age of ten. Additionally, this statute may apply to a person even when a child does not actually become delinquent, but the natural and probable consequence of a person's actions (or omissions) would cause the child to become delinquent.²⁶⁷ A person is guilty of a felony when death is a result or when the child's act is a felony under state or federal criminal law.²⁶⁸ The statute does not list specific criminal actions that may constitute a violation because it is unnecessary. The action the person or parent takes, which contributes to the child's commission of a crime, is all that is necessary under the statute.²⁶⁹

A parent may be held liable under this statute when they gift their child a gun. In *State v. Miguel*,²⁷⁰ a stepfather provided his minor stepdaughter and her friend with controlled substances, alcohol, and marijuana.²⁷¹ The Wisconsin Court of Appeals affirmed the trial court's judgment in favor of the state, finding the stepfather guilty of contributing to the delinquency of a child.²⁷² In such cases where a parent or guardian provides or "gifts" their minor child a gun—just like a stepfather providing his minor stepdaughter with drugs—the conduct can be treated similarly under the statute for it is illegal in Wisconsin to possess controlled substances unless a person meets the statutory exceptions.²⁷³ It is also illegal for any person under the age of eighteen to possess or be armed with a dangerous weapon.²⁷⁴ Here, because these actions would

263. § 948.40(2).

264. Wis. II-Criminal 2171.

265. § 948.40.

266. § 948.40(1)–(2).

267. § 948.40(3).

268. § 948.40(4)(a)–(b).

269. See § 948.40.

270. No. 2014AP2819-CRNM, 2016 WL 8605193 (Wis. Ct. App. Feb. 3, 2016).

271. *Id.* at *1.

272. *Id.*

273. WIS. STAT. § 961.41(3g) (2023–24).

274. § 948.60(2)(a) (stating that "[a]ny person under 18 years of age who possesses or goes armed with a dangerous weapon is guilty of a Class A misdemeanor").

be illegal for a minor to do, contributing to these delinquent acts as an adult is illegal under this statute. Thus, at the very least, Wisconsin prosecutors can and should consider charging parents under the contributing to the delinquency of a child statute when faced with less egregious facts than the *Crumbley* and *Gray* cases.

Wisconsin prosecutors can also charge a parent under the second-degree reckless homicide statute in addition to contributing to the delinquency of a child. In *State v. Patterson*,²⁷⁵ the Wisconsin Supreme Court held that “the punishments for first-degree reckless homicide by delivery of a controlled substance and contributing to the delinquency of a child with death as a consequence are [not] multiplicitous when both convictions arise from the same death.”²⁷⁶ Ultimately, when faced with a school shooting arising out of egregious facts on the part of the parents, Wisconsin prosecutors can consider bringing charges under both the second-degree reckless homicide statute and contributing to the delinquency of a child statute.

B. The Firearm Statutes

Wisconsin prosecutors can and should consider the state’s criminal laws regarding gun safety when faced with a parent’s involvement in a school shooting. There are two firearm statutes of particular importance. The first, Wisconsin Statutes section 948.55, titled “Leaving or storing a loaded firearm within the reach or easy access of a child,” makes it a misdemeanor for anyone who “recklessly stores or leaves a loaded firearm within the reach or easy access of a child” if the “child obtains the firearm *without* the lawful permission of his or her parent or guardian or the person having charge of the child” and the child “discharges the firearm and the discharge causes bodily harm or death to himself, herself or *another*.”²⁷⁷ It also makes it a misdemeanor if the “child obtains the firearm *without* the lawful permission of his or her parent or guardian or the person having charge of the child” and “possesses or exhibits the firearm in a public place.”²⁷⁸ However, this crime is limited to children

275. 2010 WI 130, 790 N.W.2d 909.

276. *Id.* ¶¶ 2–3.

277. § 948.55(2) (emphasis added).

278. § 948.55(3)(a)–(b) (emphasis added).

under the age of fourteen years old²⁷⁹ and includes nine exceptions.²⁸⁰ The exceptions are as follows:

- (a) The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.
- (b) The firearm is securely locked with a trigger lock.
- (c) The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.
- (d) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during or incidental to the performance of the person's duties. . . .
- (e) The child obtains the firearm as a result of an illegal entry by any person.
- (f) The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under s. 939.48.
- (g) The person who stores or leaves a loaded firearm reasonably believes that a child is not likely to be present where the firearm is stored or left.
- (h) The firearm is rendered inoperable by the removal of an essential component of the firing mechanism such as the bolt in a breech-loading firearm.²⁸¹

These exceptions to the statute seemingly pose safe storage duties on adults when children under the age of fourteen are likely to be present. Parental liability is not imposed, and the law is not broken, if the firearm is secured.²⁸² Thus, every time a school shooting is committed by a child under the age of fourteen, prosecutors should consider this statute if the circumstances surrounding the shooting involve a firearm used by a child, just like in the case of Colin Gray. Additionally, because most school shooters obtain the gun used in the shooting from their own home,²⁸³

279. § 948.55(1). Wisconsin's criminal laws do not share a universal definition for what constitutes a child. *See* § 948.01(1) (addressing the "Crimes Against Children" code, defining a child as someone "who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, 'child' does not include a person who has attained the age of 17 years."); *see also* WIS. STAT. § 48.02(2) (addressing the "Children's Code" where child is defined as someone "who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, 'child' does not include a person who has attained 17 years of age").

280. § 948.55(4).

281. § 948.55(4)(a)–(h).

282. *See* § 948.55(4)(a)–(b).

283. *See supra* note 163 and accompanying text.

Wisconsin cannot overlook how the child obtained the gun in the first place. Charging under this statute would provide notice to the public that if a child gains access to an unsecured firearm and discharges it, serious penalties may result.

In addition to the safe storage firearm statute, it is also a criminal offense for a parent to give a gun to a child. The second firearm statute, Wisconsin Statutes section 948.60, titled “Possession of a dangerous weapon by a person under 18,” makes it a felony for a person to “intentionally sell[], loan[] or give[] a dangerous weapon to a person under 18 years of age.”²⁸⁴ It also makes it a higher class felony if that child discharges the firearm and causes death to themselves or another human being.²⁸⁵ Despite the serious penalties, this statute is seemingly protective of parental liability because it provides many exceptions, just like the previous firearm statute. For instance, this crime is not violated when a parent provides a minor with a firearm for the purposes of “target practice under the adult’s supervision or in a course of instruction in the traditional and proper use of the dangerous weapon under the adult’s supervision.”²⁸⁶

Because both of Wisconsin’s firearm statutes seem to protect the innocence of parents in circumstances where they reasonably allow their children use of a firearm, as in target practice or other traditional senses, or when they properly store the firearm away from children, the current law provides a safety net for parental liability in situations that call for it. These firearm laws demonstrate that only those parents who are careless with their weapons around children will be exposed to penalties under the law, not those who use these reasonable and easy-to-use measures gifted under Wisconsin law. It is simple—do not give your minor a firearm or leave it easily accessible to them. Otherwise, prosecutors can and should apply these laws to parents when there is such a finding that a minor obtained a firearm due to a violation of either of these statutes. If prosecutors take these statutes seriously, Wisconsin parents will be put on notice of what not to do—hopefully reducing mass shootings and preventing these tragedies from continuing to occur in our state and beyond.

CONCLUSION

The historic conviction of a school shooter’s parents in Michigan has set a legal precedent that other states, including Georgia, are beginning to explore. With Wisconsin having experienced its deadliest school shooting in December 2024, the question of parental

284. § 948.60(2)(b).

285. § 948.60(2)(c).

286. § 948.60(3)(a).

accountability is more pressing than ever. While Wisconsin lacks an involuntary manslaughter statute, which was used by Michigan to sustain its convictions, Wisconsin's existing laws, such as second-degree reckless homicide and negligent homicide by handling a dangerous weapon, offer a viable path for prosecuting parents whose serious actions and omissions contribute to mass shootings. Although prosecutors may be wary about placing these charges on parents because of the difficulty in proving the causation and awareness of risk elements, along with having to establish a duty to act, such obstacles do not render a conviction impossible. Understanding Michigan's legal strategy and Georgia's ongoing case provides Wisconsin prosecutors with a framework and an understanding of the unique legal facts to look for when applying these statutes effectively to a similarly situated deadly school shooting.

Beyond homicide charges, Wisconsin also has less serious statutory mechanisms, including contributing to the delinquency of a child and two firearm statutes, that can serve as tools for accountability. Utilizing these laws would send a clear message to parents: Securing firearms in the home is not just a best practice but a legal necessity to avoid liability and to best protect our children at school. As seen in Michigan, legal accountability can drive legislative action, leading to stronger gun storage laws. If Wisconsin follows this trend, it may not only hold negligent parents accountable but also take a crucial step toward preventing future school shootings by keeping firearms out of the hands of children.