

NOTES

The Causes of Minor Suicide: How the Restatement Approach to Foreseeability & Scope of Liability Fails to Act as a Deterrent

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Abstract

Suicide is one of the most common causes of death among individuals younger than eighteen years old. While psychological and social sciences continue to study the causes of the increasing prevalence of suicide in children and teens, the law largely continues to treat suicide as an isolated event. This Note tracks the historical treatment of suicide both under tort and criminal law, supporting the shift away from the traditional view of suicide towards one that more closely aligns with the growing understanding of the many factors that can contribute to a minor's suicide. Ultimately, this Note argues that many minor suicides should be treated as foreseeable, allowing actions in tort.

Keywords: suicide; torts; causation; wrongful death

I. Introduction

On November 20, 2010, fourteen-year-old Adam Tonn ended his own life by shooting himself with a gun legally owned but questionably stored by his stepfather, Eric Moore, in the master bedroom of his Arizona home.¹ Adam's father, Matthew Tonn, who shared custody of Adam, filed a wrongful death action against Adam's mother and stepfather ("the Moores"), alleging negligent storage of the firearm.² Improper and unsecured storage of the weapon and ammunition, the suit alleged, was a direct and proximate cause of the child's death.³ Arizona courts disagreed, however, ruling that Adam's death was "unforeseeable" because the boy had never shown notable signs of depression or suicidal ideation.⁴ Therefore, "As a matter of law, Adam's suicide constituted an intervening, superseding cause for his death, releasing the Moores from liability for allegedly storing the firearm inappropriately."⁵ The grant of summary judgment was upheld on appeal, and the question of negligent firearm storage – in truth the crux of the case – was never addressed.⁶

Historically, suicides were uniformly legally unactionable due to this reasoning and based on two overlapping prongs: foreseeability issues and the breaking of the causal chain.⁷ However, recent trends in

¹Tonn v. Moore, No. 1 CA-CV 12-0372, 2013 WL 1858773, at *1 (Ariz. Ct. App. Apr. 23, 2013).

²*Id.* ("The gun was stored, unloaded, in an *unlocked* case hidden under a pile of clothes on a shelf in Amy and Eric's bedroom closet ... The ammunition was hidden separately under a different pile of clothes *in the same closet.*") (emphasis added).

³*Id.*

⁴*Id.* at *3.

⁵*Id.* at *4; *see also id.* at *2 ("An intervening cause is a superseding cause when the intervening cause was unforeseeable and, when viewed in hindsight, extraordinary.").

⁶*Id.*

⁷*See, infra*, Section IIa.

both criminal and civil law serve as a step towards potential third party liability for suicides.⁸ Indeed, the shift in causation analysis formalized in the Restatement (Third) of Torts (the “Restatement”) should make tort liability in certain suicide cases a possibility.⁹ The Restatement now limits tort liability to “harms that result from the risks that made the actors conduct tortious.”¹⁰ This reframing stems from a shift away from traditional proximate cause analysis, instead opting for a scope of liability analysis dependent on the unreasonableness of certain conduct due to associated foreseeable risks.¹¹ In other words, the latter prong of the barriers to liability following a suicide, the breaking of the causal chain, is no longer an issue.

Therefore, if suicide is a foreseeable harm as a result of certain unreasonable conduct, that conduct was negligent and should be actionable if the harm comes to pass. Still, suicides are typically treated as separate, special cases. In 2019, Alex Long of the University of Tennessee College of Law called for an end to the “suicide rule,” supporting the trend “away from singling out suicide cases for special treatment and toward an analytical framework that more closely follows traditional tort law principles.”¹²

This Note supports this call for change, perfectly in step with trends in the law of the United States, to treat suicide not as an incident isolated to the deceased, and thereby unactionable under theories of proximate cause, but as a potentially foreseeable tragedy with causes both internal and external to the deceased. Indeed, at the very least, the question of negligent gun storage and ownership in the Adam Tonn case should have been a question for the jury.¹³ Further, this Note agrees with the idea and argues that, given the extreme control parents have over the day-to-day lives, medical treatment, and mental health care of their children, the law of the United States should recognize wrongful death causes of action or similar actions in tort against parents in the aftermath of a child’s suicide under the Restatement approach.¹⁴

Finally, though, this Note suggests even the Restatement view of scope of liability may not be enough to sufficiently provide an answer to the underlying causes of suicide nor act as a suicide deterrent. Liability will still be impossible in cases such as Adam Tonn’s, where the suicide was considered unforeseeable as a matter of fact. Therefore, in cases of minor suicide, the law should go one step further. After all, suicides – particularly the suicides of children and teens – are special cases and should be treated as such.

This Note argues, in particular, that the suicides should be considered foreseeable as a matter of law in wrongful death suits when the decedent was a minor, and where one or more parent or guardian met certain causation thresholds of abuse, neglect, or negligence as a matter of fact to be teased out at the common law.¹⁵ In other words, the question of foreseeability and unreasonableness inherent in a scope of liability analysis should not be put to the jury in certain cases. Select conduct by a parent or guardian should be considered inherently unreasonable when a subsequent suicide could have been prevented, even if the suicide would typically be dubbed unforeseeable. This shortcut for extreme cases would function, in practice, akin to the doctrines of *res ipsa loquitur*,¹⁶ strict liability,¹⁷

⁸See, *infra*, Section II, *passim*.

⁹RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 29 (2010).

¹⁰*Id.*

¹¹See *id.* cmt. d (“An actor should be held liable only for harm that was among the potential harms ... confining liability’s scope to the reasons for holding the actor liable in the first place.”).

¹²Alex B. Long, *Abolishing the Suicide Rule*, 113 NW. L. REV. No. 4, 1, 1 (2019).

¹³See Tonn, 2013 WL 1858773 at *4 (upholding the grant of summary judgment for the defendants).

¹⁴See, e.g., Vanessa Gardianos, *Adolescent Suicide: A Call for Parental Liability*, 24 ST. JOHNS J. OF CIV. RTS. AND ECON. DEV. 201 *passim* (2009).

¹⁵Examples discussed *infra*.

¹⁶RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 17 (Am. L. Inst. 2010) (“The factfinder may infer that the defendant has been negligent when the accident causing the plaintiff’s harm is a type of accident that ordinarily happens as a result of the negligence of a class of actors of which the defendant is the relevant member.”).

¹⁷RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 20 (Am. L. Inst. 2010) (“(a) An actor who carries on an abnormally dangerous activity is subject to strict liability for physical harm resulting from the activity ... (b) An activity is

or per se negligence,¹⁸ already readily accepted within the purview of tort law as logical methods to err towards liability in certain cases.

Section II will begin by outlining the treatment of suicide cases through a historical lens, analyzing both the tort framework applicable in civil cases, including the applicability of the parental immunity doctrine, as well as the changing treatment of suicide in criminal contexts. Section III will then analyze the statistical prevalence of suicide in the United States, including the alarming increase over recent years as well as the tragic commonality of minor suicide. Further, Section III will discuss some of the underlying causes of minor suicide, including internal factors pertaining to the mental and physiological development of children and teens, as well as external factors such as refusals to provide care, abuse or neglect, and negligence pertaining to methods of suicide, such as negligent storage of firearms or medication. Finally, in Section IV, this Note will conclude by arguing for the assumption of foreseeability, making liability a certainty rather than a possibility in wrongful death suits based on the suicide of a minor child. In sum, this Note will conclude that this shortcut, modifying existing understandings of tort law, is warranted given the likewise extreme nature of minor suicide as a preventable tragedy.

II. Suicide and the Law

This Section will summarize the historical legal treatment of suicide, including how the legal view of self-inflicted death is evolving, driven by general trends in tort and criminal law.

a. The Suicide Rule

Historically, within English common law and early American colonial law, suicide, due in large part to religious taboos and stigma surrounding mental health issues, was generally a felony committed by the decedent, and only the decedent.¹⁹ Though the harsh view of suicide as a crime, including property forfeiture provisions under English law, faded in the United States during the nineteenth century,²⁰ remedy at tort remained impossible while moral disapproval persisted.²¹ Given that the act of suicide itself was considered a moral and legal wrong enacted by the decedent,²² legal causation linking the suicide back to anyone other than the deceased individual failed.²³ As previously noted, liability of third parties for a suicide typically failed due to issues of foreseeability and causation, with each of these two factors weighing heavily on the other.²⁴

For instance, in *Scheffer v. R.R. Co.*, an 1881 case, the court held that a suicide was not a foreseeable result of injuries suffered prior to the suicide and the suicide was therefore unactionable.²⁵ The suicide itself was an intervening cause of death and the chain of causation was broken as to third parties.²⁶ Both the cause and the harm itself were isolated to the individual committing suicide.²⁷ This rule held firm a

abnormally dangerous if: (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and (2) the activity is not one of common usage.”)

¹⁸RESTATEMENT (THIRD) OF TORTS § 14 (Am. L. Inst. 2010) (“An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against the type of accident the actor’s conduct causes, and if the accident victim is within the class of persons the statute is designed to protect.”).

¹⁹*Id.*; see also Long, *supra* note 12, at 777.

²⁰Long, *supra* note 12, at 779.

²¹See Andrea MacIver, *Suicide Causation Experts in Teen Wrongful Death Claims: Will They Assist the Trier of Fact?*, 45 J. MARSHALL L. REV. 51, 55 (2011).

²²See Long, *supra* note 12, at 777 (discussing a sixteenth-century British decision describing suicide as an offense “against nature, against God, and against the King”) (see *Hales v. Petit*, (1562) 75 Eng. Rep. 387, 400 (QB)).

²³See MacIver, *supra* note 21, at 55.

²⁴See, *supra*, Section I.

²⁵See *Scheffer v. R.R. Co.*, 105 U.S. 249 (1881).

²⁶See *id.*

²⁷See, e.g., Tonn, 2013 WL 1858773; Logarta, 998 F. Supp. 998.

century later in a 1994 Ohio case, *Laytart v. Laytart*, involving a teen suicide after abuse by an adult.²⁸ The court dismissed the case, concluding suicide was an intervening cause, and suicide was not a foreseeable result of abuse.²⁹ Further, given that suicide is an inherently self-inflicted and intentional act, courts generally decline to recognize proximate cause of injury outside of the act and the individual in question.³⁰ For example, the court in *La Quinta Inns, Inc. v. Leech*, the court held that the suicide itself was the “sole proximate cause of death.”³¹

The only exception to the limits on tort liability relating to suicide generally recognized, though not supported by modern understanding of human psychology, is one where a tort by a third-party causes “insanity” in the deceased such that the insanity leads to an “irresistible impulse” towards suicide.³² For example, in 1994 a Wyoming court considered whether years of sexual abuse had negated the “voluntary” nature of suicide in *R.D. v. W.H.*, finding the wrongful death cause of action adequately pled.³³ The flaws in this theory become obvious when viewed with a modern understanding of human psychology, however.³⁴ The term “insanity” has not been a diagnosis for about a century, but still remains a legal status.³⁵

Still, this model is helpful to illustrate the logic behind removing or scaling back the hard lines in the legal treatment of suicide.³⁶ The “insanity” suicide theory is based on the idea that legally insane parties lack self-control, and therefore could not have intended the suicide.³⁷ In other words, the causal chain necessary for tort liability on another party, normally broken by the deceased’s exclusive intent to take their life, is maintained.³⁸ Since the deceased party did not truly intend to take their own life, they were a fully innocent party and culpability for the death can fall on another based on some action conducted by that other.³⁹ Therefore, courts have considered and accepted that, in some circumstances, suicide may have contributing, and actionable, causes external to the victim.⁴⁰

Treatment of suicide as an individualized, isolated incident in order to cut off causation at the decedent has been dubbed “the suicide rule” by some courts and commentators.⁴¹ The suicide rule remains the default view of suicide “under normal circumstances.”⁴² However, as the understanding of mental illness evolves, some courts have moved towards a more traditional tort analysis of suicide rather than applying the specialized causation rule, particularly in cases of treating doctors and mental health professionals.⁴³ For example, in *Edwards v. Tardif*, a treating doctor who prescribed antidepressants prior to a suicide was held liable for the death after the question was put to the jury.⁴⁴ Similarly, other scholars have called for parental liability, whether criminal or civil, as a method of discouraging the abuse and neglect that may lead to child suicide, though cases in this area are limited.⁴⁵

²⁸*Laytart v. Laytart*, No. 5-94-11, 1994 WL 463777, at *1 (Ohio Ct. App. Aug. 26, 1994).

²⁹*See id.*

³⁰MacIver, *supra* note 21, at 55.

³¹*La Quinta Inns, Inc. v. Leech*, 658 S.E.2d 637, 641 (Ga. Ct. App. 2008).

³²Allen C. Schlinsog, Jr., *Comment, The Suicidal Decedent: Culpable Wrongdoer, or Wrongfully Deceased?*, 24 J. MARSHALL L. REV. 463, 465 (1991).

³³*R.D. v. W.H.*, 875 P.2d 26, 29 (Wyo. 1994).

³⁴Kenneth J. Weiss, et al., *Insanity: A Legal and Cinematic Diagnosis*, 207(9) J. OF NERVOUS AND MENTAL DISEASE 749, 749 (2019).

³⁵*Id.*

³⁶*See* Schlinsog, *supra* note 32, at 467; *see also* Long, *supra* note 12, at 780 (“What mattered was whether the decedent understood the nature and consequences of [their] act”).

³⁷*See* Schlinsog, *supra* note 32, at 467.

³⁸*Id.*

³⁹*Id.*

⁴⁰*Id.*

⁴¹Long, *supra* note 12.

⁴²*See, e.g.,* Wickersham v. Ford Motor Co., 194 F. Supp. 3d 434, 442 (D.S.C. 2016).

⁴³Long, *supra* note 12.

⁴⁴*Edwards v. Tardif*, 240 Conn. 610, 611, 692 A.2d 1266, 1267 (1997); *see also* Wozniak v. Lipoff, 750 P.2d 971, 983 (Kan. 1988) (holding that known treatment for depression made suicide a foreseeable and actionable result).

⁴⁵Gardianos, *supra* note 14, *passim*.

As discussed, *supra*,⁴⁶ under the existing structure of torts liability, “An actor’s liability is limited to those harms that result from the risks that made the actor’s conduct tortious,”⁴⁷ a view enabling liability for conduct that foreseeably increased the risk of suicide. However, “When a force of nature or an independent act is also a factual cause of harm, an actor’s liability is limited to those harms that result from the risks that made the actor’s conduct tortious.”⁴⁸ It is by and through this understanding that the *Tonn* court found inadequate causation as a matter of law.⁴⁹ Indeed, it is through this lens suicide has been viewed by the law, historically.⁵⁰

Within this existing framework, there are certain shortcuts that lower the burden of proof as to the scope of liability in certain extreme cases. For example, the doctrine of *res ipsa loquitur* allows the inference of negligence liability “when the accident causing the plaintiff’s harm is a type of accident that ordinarily happens as a result of the negligence of a class of actors of which the defendant is the relevant member.”⁵¹ In other words, the jury is allowed to use logical reasoning to assume the alleged negligence occurred based simply on the injury suffered itself. Likewise, conduct involving “abnormally dangerous activity” may be subject to strict liability, essentially assuming causation is automatically met due to the unnecessary risk associated with the conduct.⁵² Similarly, the doctrine of *per se* negligence likewise determines liability based on the mere occurrence of a certain issue protected by statute, alone.⁵³

b. Wrongful Death Actions

Another historical barrier to liability following a suicide is that there is no common law right of action for wrongful death; however, every state in the United States has passed a wrongful death statute allowing recovery.⁵⁴ These statutes generally track wrongful death through underlying personal injury actions and tortious negligence law.⁵⁵ In other words, if negligence causes death, a wrongful death suit may be the best of the available responses.⁵⁶ Such actions, therefore, generally consist of a duty to the deceased individual that was breached through negligence or similar activity that caused the death, which in turn caused damages.⁵⁷

⁴⁶See, *supra*, Section I.

⁴⁷RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 29 (Am. L. Inst. 2010); see also RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM 6 *Spec. Note* (2010) (noting that while courts and commentators typically use the term “proximate cause,” the concept “scope of liability” is likely more accurate when discussing limitations to liability: “Tort law does not impose liability on an actor for all harm factually caused by the actor’s tortious conduct.”).

⁴⁸RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 34 (A. L. Inst. 2010)

⁴⁹See *Tonn*, 2013 WL 1858773, at *4.

⁵⁰See, e.g., *Logarta v. Gustafson*, 998 F. Supp. 998, 1004 (E.D. Wis. 1998) (“If such intervening force takes the form of suicide the practically unanimous rule is that such act is a new and independent agency which does not come within and complete a line of causation from the wrongful act to the death and therefore does not render defendant liable for the suicide.”) (internal quotations, citations omitted); R.D., 875 P.2d 26 at 28 (“The general rule with regard to liability for negligent actions which lead to suicide is: The decedent’s intentional and voluntary act in taking his own life is an intervening cause which breaks the chain of causation and precludes a finding of liability against the tortfeasor.”)

⁵¹RESTATEMENT, *supra* note 16.

⁵²See RESTATEMENT, *supra* note 17.

⁵³See RESTATEMENT, *supra* note 18.

⁵⁴Jacob A. Stein, STEIN ON PERSONAL INJURY DAMAGES § 3:2, 3rd ed. (1997).

⁵⁵See, e.g., COLO. REV. STAT. ANN. 13-21-201 – 12-21-204 (West 2021); MASS. GEN. LAWS ANN. ch. 229 § 2 (West 2021); N.Y. EST., POWERS AND TR. LAW § 5-4.1 (McKinney 2021).

⁵⁶See, e.g., *Childers v. Schachner*, 612 So.2d 699 (Fla. Dist. Ct. App. 1993) (involving a wrongful death suit brought by a nonnegligent parent against a negligent parent); *Burley v. Douglas*, 26 So.3d 1013 (Miss. 2009) (wrongful death suit brought by grandfather alleging negligence as the cause of a fatal car accident that killed his grandchildren); *In re: Hudspeth Cty., Tex. And the Hudspeth Cty. Sheriff’s Office*, No. 08-21-00169-CV, 2021 WL 5078823 (Tex. App. Nov. 2, 2021) (wrongful death suit alleging negligence underlying death due to a fall)

⁵⁷See, e.g., *How a Wrongful Death Suit Works*, ALLLAW (last visited Dec. 2022), <https://www.alllaw.com/articles/nolo/personal-injury/how-wrongful-death-lawsuit-works.html>; *Wrongful Death*, JUSTIA (last visited Dec. 2022), <https://www.justia.com/injury/wrongful-death/>; see also *Wrongful Death Lawsuits in Massachusetts*, NOLO (last visited

Notably, depending on the state, there may be limits on who can bring a wrongful death suit.⁵⁸ For example, some states limit wrongful death suits to the executors of the deceased's estate.⁵⁹ For cases that seek parental liability for the suicide of a child, commentators have suggested allowing state entities or welfare agencies on states' behalf to bring suits in order to further the public interest goal of child protection.⁶⁰ While this Note supports allowing such actors to bring wrongful death suits against negligent parents, for purposes of the causation analysis it will be assumed the suits in question are permitted to be brought by the suing individual. In addition to state actors, this may include one parent suing the other for wrongful death, or a sibling, friend, or other close family member.⁶¹

c. Parental Immunity

Any suit brought against a parent – such as the Adam Tonn suit, the wrongful death actions contemplated by this Note, or more general negligence suits not involving suicide – must also consider parental immunity. Historically, parental immunity has served as a complete barrier against suits brought by children against their guardians.⁶² The public policy reasoning underlying parental immunity from tort suits by their children is the fear of disturbing domestic tranquility, the risk of fraud and collusion, depletion of family resources, the potential for the parent to recover via inheritance, and interference with “parental care, discipline, and control.”⁶³ However, what was once the uniform rule barring suits brought by children against their parents began to falter in the 1960s.⁶⁴ Indeed, views of childhood, parenthood, and the relationship between a child and a guardian had changed dramatically, requiring an updated legal view.⁶⁵ As a result, the immunity was “whittle[d] away by statute and by the process of interpretation, distinction and exception.”⁶⁶ By the 1970s, twelve states had already abolished the doctrine altogether.⁶⁷ Today, the majority view today is that “A parent is not immune from tort liability to his or her child,”⁶⁸ though several states continue to prescribe to the immunity while carving out exceptions for “brutal, cruel, or inhuman treatment” as needed.⁶⁹

Dec. 2022), <https://www.nolo.com/legal-encyclopedia/wrongful-death-lawsuits-massachusetts.html>; *Can I File a Wrongful Death Claim After a Suicide?* SALAMATI LAW FIRM (last visited Dec. 2022), <https://www.salamatilaw.com/wrongful-death/can-i-file-a-wrongful-death-claim-after-a-suicide/>.

⁵⁸See, e.g., *Yardley v. W. Ohio Conf. of the United Methodist Church, Inc.*, 742 N.E.2d 723, 727 (Ohio 2000) (holding that wrongful death suits could only be brought by a court-appointed administrator, executor, or representative of the decedent's estate); *Renville v. Fredrickson*, 101 P.3d 773, 777 (Mont. 2004) (finding that only a personal representative could bring a wrongful death suit under state statute); *Wrongful Death Lawsuits in Massachusetts*, NOLO (last visited Dec. 2022), <https://www.nolo.com/legal-encyclopedia/wrongful-death-lawsuits-massachusetts.html>.

⁵⁹*Yardley*, 742 N.E.2d at 727.

⁶⁰Gardianos, *supra* note 14, at 232-233.

⁶¹See, e.g., *Childers*, 612 So.2d 699.

⁶²See, e.g., *Broadbent v. Broadbent*, 184 Ariz. 74, 76, 907 P.2d 43, 45 (1995) (“No American child had sought recovery against a parent for tortious conduct until the late nineteenth century.”)

⁶³See *id.* (citing *Streenz v. Streenz*, 106 Ariz. 86, 87, 471 P.2d 282, 283 (1970)).

⁶⁴See, e.g., *Goller v. White*, 20 Wis.2d 402, 122 N.W.2d 193 (abolishing parental immunity in Wisconsin – the first state to do so); *Gibson v. Gibson*, 3 Cal. 3d 914, 918, 479 P.2d 648, 650 (1971) (abolishing parental immunity in California, joining ten other states including Alaska, Arizona, Illinois, Kentucky, Minnesota, New Hampshire, New Jersey, New York, North Dakota, and Wisconsin); *but see* *Neel v. Sewell*, 834 F. Supp. 2d 648, 656 (E.D. Mich. 2011) (declining to abolish parental immunity in Michigan).

⁶⁵Gail D. Hollister, *Parent-Child Immunity: A Doctrine in Search of Justification*, 50.4 Fordham L. Rev. 489, 508 (1982) (“Children are no longer regarded as evil beings who must be beaten down; instead they are viewed as reasonable, friendly people who will not take advantage of their parents if they are treated nicely.”).

⁶⁶*Falco v. Pados*, 444 Pa. 372, 377, 282 A.2d 351, 354 (1971).

⁶⁷See *id.*

⁶⁸Restatement (Third) of Torts: Concluding Provisions § 2 TD No 1 (2022) (emphasis added).

⁶⁹See, e.g., *Nolasco v. Malcom*, 307 Neb. 309, 309, 949 N.W.2d 201, 202 (2020); see also § 3. Liability of parents, O'CONNOR'S TEXAS FAMILY LAW HANDBOOK Ch. 1-D § 3 (2023 ed.).

d. Criminal Treatment

It appears, meanwhile, that criminal courts are more ready to accept this shift in the understanding of suicide. Indeed, in 2003, a parent in Connecticut was criminally prosecuted for the suicide death of her child for the first time in that state's legal history.⁷⁰ In that case, a mother's failure to notice several warning signs of suicide prior to the suicide death of her twelve-year-old son, Daniel Scruggs, was put on trial.⁷¹ Before his death, Daniel failed to shower and would intentionally soil himself in order to be sent home from school or avoid attending.⁷² Daniel's mother, Judith, meanwhile, took no action, ultimately discovering his body more than twelve hours after he had died.⁷³ While the conviction was overturned on other grounds,⁷⁴ this kind of criminal liability can be viewed as a predecessor to the kind of civil liability via wrongful death actions described here.

Similarly, the high-profile case⁷⁵ involving the death of eighteen-year-old Conrad Roy III is notable.⁷⁶ There, Roy's girlfriend Michelle Carter, seventeen years old herself at the time, encouraged Roy via text messages to go through with his plan for suicide and even listened on a phone call while he choked and passed away.⁷⁷ Roy took his own life through voluntary carbon monoxide inhalation in his truck in July of 2014.⁷⁸ The Supreme Judicial Court of Massachusetts, in a unanimous decision in 2019, upheld Carter's conviction for involuntary manslaughter.⁷⁹

Justice Scott L. Kafker, in affirming the decision, reasoned that Roy would have been the cause of his own death had he gone through with the suicide on his first attempt – when he first entered his truck with the intent to end his own life.⁸⁰ However, Roy did not go through with the suicide based on this initial intent alone.⁸¹ Instead, he exited the truck, having second thoughts, and only reentered upon conversing via text message with Carter, who encouraged him to get back in the truck and go through with the planned suicide.⁸² Via text message, Carter argued “I thought you wanted to do this ... The time is right and you're ready – just do it babe.”⁸³ This reset the timing of causation, and enabled prosecutors to hold Carter, an external actor not even physically present at the time of the suicide, liable for Roy's death.⁸⁴

In describing the outcome of the case, Massachusetts District Attorney from Bristol County Thomas Quinn III stated, “As the court found in two separate decisions, [Carter's] conduct was wanton and reckless, and caused the death of Conrad Roy,” echoing Justice Kafker's analysis.⁸⁵ Commentators speculated what kind of legal precedent the decision would set within Massachusetts and across the

⁷⁰*Id.* at 201; *see also id. passim* (discussing the death of Daniel Scruggs in 2002, the parental neglect preceding the suicide, and the criminal prosecution that followed).

⁷¹*Id. passim.*

⁷²*See id.*

⁷³*See id.*

⁷⁴*Id.* at 201.

⁷⁵*Commonwealth v. Carter*, 481 Mass. 352, 115 N.E.3d 559 (2019); *see also, e.g.*, Daniel Kreps, *Elle Fanning Stars as Notorious Teen Texter Michelle Carter in 'The Girl from Plainville' Trailer*, *Rolling Stone* (Mar. 2, 2022), <https://www.rollingstone.com/tv/tv-news/the-girl-from-plainville-michelle-carter-hulu-series-1315385/> (describing the forthcoming Hulu Original drama recounting this case).

⁷⁶Alanna Durkin Richer, *Conviction Upheld for Woman Who Urged Boyfriend's Suicide*, *AP NEWS* (Feb. 6, 2019), <https://apnews.com/article/north-america-us-supreme-court-ma-state-wire-us-news-ap-top-news-abd449bd66274f698e9ff4d4c2247a8e>; Bob McGovern, *McGovern: Michelle Carter Case Set to Make Legal History*, *BOSTON HERALD* (June 16, 2017), <https://www.bostonherald.com/2017/06/16/mcgovern-michelle-carter-case-set-to-make-legal-history/>.

⁷⁷Richer, *supra* note 76.

⁷⁸*Id.*

⁷⁹*Id.*

⁸⁰*Carter*, 481 Mass. 352, 115 N.E.3d 559 at 568 (Until the victim got out of the truck, the... the victim [was] the cause of his own suicidal actions and reactions”).

⁸¹Richer, *supra* note 76.

⁸²*Id.*

⁸³*Id.*

⁸⁴*Carter*, 481 Mass. 352, 115 N.E.3d 559 at 568 (This period of “self-causation” and “self-help,” which is completely consistent with his prior behavior, ended when [Roy] got out of the truck”).

⁸⁵Richer, *supra* note 76.

country,⁸⁶ specifically stating it would speak to whether it is a crime to tell another to take their own life and theorizing the highly publicized nature of the case may encourage lawmakers to codify such encouragement of suicide as criminal.⁸⁷ While the media coverage surrounding the case seemed to indicate that public opinion supported conviction,⁸⁸ the decision has also been criticized.⁸⁹ Nevertheless, the legal reasoning underlying the cases rely on acknowledgment of a lack of pure, individualized intent behind the choice of suicide in some cases.⁹⁰ In other words, in these cases, the court acknowledged the cause of the suicide was not as simple as it may have seemed.

Another important consideration in criminal cases relating to suicides of minors is parental abuse. Indeed, ongoing or acute abuse by a guardian is a well-documented risk factor for child suicide.⁹¹ Child abuse is covered by federal law via the Federal Child Abuse Prevention and Treatment Act, with supplementation at the state regulatory level.⁹² Specifically, under federal law, “any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation” constitutes abuse of a child.⁹³ Under state law, Massachusetts, for example, defines abuse as “the non-accidental commission of any act by a caretaker upon a child under age 18 which causes, or creates a substantial risk of physical or emotional injury, or constitutes a sexual offense under the laws of the Commonwealth or any sexual contact between a caretaker and a child under the care of that individual.”⁹⁴ All fifty states have passed statutory or regulatory definitions of child abuse in addition to the federal framework.⁹⁵ Despite this underlying legal and regulatory structure, the Scroggs case is the only example of criminal charges being brought against a parent for a child’s suicide.

Proof of the abuse is difficult to establish in many cases.⁹⁶ The victim – the child – may be the only witness,⁹⁷ and “[a] child’s feelings of vulnerability and guilt and his or her unwillingness to come forward are particularly acute when the abuser is a parent.”⁹⁸ Further, victim statements recounting the abuse suffered may, depending on state law, be considered hearsay and therefore inadmissible at trial.⁹⁹ However, despite the difficulties, in many cases abuse, whether physical, sexual, or emotional, can be proved.¹⁰⁰ In many cases, the plaintiff or prosecutor may rely on expert testimony speaking to the characteristics and common behavioral traits of sexually abused children.¹⁰¹ Of course, the strongest

⁸⁶McGovern, *supra* note 76.

⁸⁷Ray Sanchez & Natisha Lance, *Judge Finds Michelle Carter Guilty of Manslaughter in Texting Suicide Case*, CNN (June 17, 2017), <https://www.cnn.com/2017/06/16/us/michelle-carter-texting-case/index.html>.

⁸⁸McGovern, *supra* note 76 (“We want to punish those who break from social norms and hurt others, and it’s clear popular opinion is against Carter”).

⁸⁹Mark Tunick, *TEXTING, SUICIDE, AND THE LAW passim* (2020).

⁹⁰See Gardianos, *supra* note 14, *passim*.

⁹¹Angelakis, et al., *Association of Childhood Maltreatment With Suicide Behaviors Among Young People*, JAMA NETWORK OPEN (Aug. 5, 2020).

⁹²See Child Welfare Information Gateway, *What is Child Abuse and Neglect? Recognizing the Signs and Symptoms*, CHILDREN’S BUREAU (Apr. 2019) at 2 [hereinafter Child Welfare Gateway].

⁹³See *id.*; 42 U.S.C. 5101 note, § 3.

⁹⁴110 Mass. Code Regs. 2.00.

⁹⁵See, e.g., Child Welfare Information Gateway, *State Statutes Search* (Accessed Dec. 2022), <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main.getResults> [hereinafter Gateway Statute Search].

⁹⁶See, e.g., Jaffar Diab, *Child Abuse, Experts and the Law: Making Massachusetts Expert Evidence Friendly*, 37 Suffolk U. L. Rev. 121, 123 (2004).

⁹⁷*Pennsylvania v. Ritchie*, 480 U.S. 39, 60, 107 S. Ct. 989, 1003, 94 L. Ed. 2d 40 (1987) (“Child abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim.”).

⁹⁸*Id.*

⁹⁹*Com. v. Costello*, 411 Mass. 371, 376, 582 N.E.2d 938, 941 (1991) (analyzing victim statements in the context of hearsay rule exceptions) *but see* *State v. Smith*, 315 N.C. 76, 90, 337 S.E.2d 833 (1985) (deeming the excited utterance exception to allow admission of victim statements if made within the first several days after the assault).

¹⁰⁰See, e.g., *PLAINTIFF v. REMILLARD*, JVR No. 67074; *WHITE, PRO AMI v. VEZINA*, JVR No. 221069.

¹⁰¹See, e.g., *People v. Carroll*, 95 N.Y.2d 375, 2000 WL 1726388 (2000); *Seering v. Department of Social Services*, 194 Cal. App. 3d 298, 239 Cal. Rptr. 422 (1st Dist. 1987) (allowing expert testimony of the general characteristics associated with Child Sexual Abuse Accommodation Syndrome (CSAAS)).

cases are those with additional witnesses – and it is plausible a co-parent, friend, or relative could have witnessed the abuse. Such witnesses may be able to testify to what they saw or provide additional evidence of the abuse.

III. The Prevalence and Underlying Causes of Suicide

The evolving view of liability in suicide cases is due, in large part, to increasing understanding of the underlying causes of suicide. This Section will first discuss the social science statistics associated with suicide in the United States, before exploring internal causes, such as mental or physiological causes, and external causes. External causes to be considered in detail include parental failures or refusals to assist a struggling child, direct abuses by a parent, or parental negligence enabling access to methods of suicide.

a. *Why do people commit suicide?*

Globally, suicide claims over 800,000 individual lives each year – a rate of roughly one death by suicide every 40 seconds.¹⁰² In 2018, over 48,000 people in the United States died by suicide.¹⁰³ While this distressing number reflects a peak in suicides over the last few years,¹⁰⁴ it is but one year in a trend that has seen a roughly thirty-five percent increase in suicides since 1999.¹⁰⁵ Now, suicide is the tenth most common cause of death in the country.¹⁰⁶ Perhaps more alarming is that suicide jumps to the second most common cause of death in younger age groups.¹⁰⁷ In 2019, 1,646 individuals under the age of 18 killed themselves – a rate of nearly five suicides per day in this age group – accounting for 15.6% of all deaths of minors.¹⁰⁸ In other words, roughly one out of every seven minor deaths was a suicide. This included 534 suicides of children aged ten to fourteen.¹⁰⁹ Roughly, that covers children between fifth and eighth grade. These are young children who will never attend high school. Further, clusters of suicides are more common amongst young individuals rather than adults.¹¹⁰ Indeed, high profile suicides may lead to an uptick in suicidal tendencies within a community.¹¹¹

Some factors underlying suicide stem from inside the individual’s brain – from the chemical workings of their body. These factors are, by all outward observations, strictly “internal.” Other factors originate outside the mind, beginning with the individual’s experiences. These can be considered “external” to the deceased. While, ultimately, suicides are the decision of the deceased individual – the internal factors control – it is impossible and irresponsible to deny, despite the traditional legal view, that a plethora of external factors may have contributed to this decision and,

¹⁰²World Health Organization, *Suicide Data 2018*, (Accessed Dec. 2022) https://www.who.int/mental_health/prevention/suicide/suicideprevent/en/; see also Angelakis, *supra*, note 91.

¹⁰³Deborah M. Stone et. al., *Morbidity and Mortality Weekly Report: Changes in Suicide Rates – United States, 2018-2019*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 26, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7008a1.htm#contribAff>

¹⁰⁴*Id.*; see also Roni Caryn Rabin, *U.S. Suicides Declined Over All in 2020 but May Have Risen Among People of Color*, N.Y. TIMES, Apr. 19, 2021, at A6.

¹⁰⁵*Suicide*, NATIONAL INSTITUTE OF MENTAL HEALTH (last visited Dec. 2022), <https://www.nimh.nih.gov/health/statistics/suicide> [hereinafter NIMH on Suicide].

¹⁰⁶*Id.*

¹⁰⁷*Id.*

¹⁰⁸See WISQARS, *Leading Causes of Death Visualization Tool*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last visited Dec. 2022), <https://wisqars.cdc.gov/data/lcd/home>

¹⁰⁹NIMH on Suicide, *supra* note 105.

¹¹⁰See Keith Hawton, et al., *Clustering of Suicides in Children and Adolescents*, LANCET CHILD ADOLES. HEALTH (2019) (citing clusters of suicidal behavior in schools, universities, psychiatric units, and youth offender units).

¹¹¹Jamie Ducharme, *Suicide Deaths are Often Contagious. This May Explain Why*, TIME (2019), <https://time.com/5572394/suicide-contagion-study/>.

ultimately, the death as well.¹¹² In fact, some experts have called for a linguistic shift from the traditional phrase “committed suicide,” towards more neutral phrases such as “died by suicide.”¹¹³ While primarily this shift would serve to remove some of the stigma associated with suicide,¹¹⁴ it also clearly follows the notion that there may have been factors external to the individual that contributed to the death.¹¹⁵ The phrase “they died by suicide” is more aligned, linguistically and in implication, with the phrase “they died in a car accident,” for example, wherein fault cannot be gleaned from the statement alone and there is no implication of total responsibility on any one party.

Understanding the interplay between internal and external factors, therefore, is crucial when considering the prospect of liability following a suicide.

b. Internal Factors: Mental Illness and the Adolescent Mind

The internal factors underlying suicide are those that originated in the mind of the suicidal individual. For example, mental illness – particularly depression – is a well-documented aspect in the decision to take one’s own life.¹¹⁶ In fact, roughly sixty percent of all individuals who die by suicide suffer from a mood disorder, including major depression disorder.¹¹⁷ Depression can be effectively treated through therapies such as cognitive behavioral therapy (“CBT”) and dialectical behavior therapy (“DBT”), among other treatments.¹¹⁸ Of course, no treatment is guaranteed to fully eliminate the risk of suicide in children and teens, but access to these treatments have been shown to assist and successfully dissuade individuals contemplating ending their own life from actually attempting or going through with their plans.¹¹⁹

When considering minor suicide, specifically, it must be noted that the way the human brain develops leaves adolescents especially vulnerable to emotional distress.¹²⁰ Adolescence, in particular, is a developmental period characterized by dramatic changes in affect regulation due to underlying neurological processes.¹²¹ Specifically, the areas of the brain regulating emotion as well as the “executive section of the brain” remain underdeveloped in an individual’s brain well into one’s twenties.¹²² Youths are subjected to the experience of increasing emotional impulses stemming from “response regions” such as the hippocampus and amygdala before their “control regions” within the prefrontal cortex are fully established.¹²³ This tendency towards emotional dysregulation can affect many aspects of the child’s life, including, for example, their education.¹²⁴

¹¹²See *Frequently Asked Questions About Suicide*, NATIONAL INSTITUTE OF MENTAL HEALTH (last visited Dec., 2022) [hereinafter NIMH FAQs] (citing substance abuse, chronic pain, and physical or sexual abuse as contributing factors to suicide, among others).

¹¹³Robert Olson, *Suicide and Language*, CENTRE FOR SUICIDE PREVENTION (last visited Dec. 2022), <https://www.suicideinfo.ca/resource/suicideandlanguage/>.

¹¹⁴*Id.* (noting the phrase “commit suicide” likely stems from the historical period wherein suicide was a crime, and that a similar stigma remains).

¹¹⁵Compare the phrase “they committed suicide” with “they died by suicide.” In the former, the deceased individual is the sole actor. In the latter, more neutral phrase, the implication that the action is solely that of the deceased is far less strong.

¹¹⁶See, e.g., *Does depression increase the risk of suicide?*, U.S. DEP’T OF HEALTH AND HUM. SERV. (last visited Dec. 2022), <https://www.hhs.gov/answers/mental-health-and-substance-abuse/does-depression-increase-risk-of-suicide/index.html>.

¹¹⁷*Id.*

¹¹⁸NIMH FAQs, *supra* note 112.

¹¹⁹*Id.*

¹²⁰Jan Brogan, *Teen’s brains make them more vulnerable to suicide*, THE BOS. GLOBE, March 10, 2014, <https://www.bostonglobe.com/lifestyle/health-wellness/2014/03/09/brain-development-makes-teens-more-vulnerable-suicide-and-mood-disorders/tGBStHOnjqAyanfCe7rbsK/story.html> (“The hippocampus and amygdala...[which] feels and stores emotions... matures well ahead of the section of the brain that regulates those emotions and impulses.”)

¹²¹Nim Tottenham & Adriana Galván, *Stress and the Adolescent Brain: Amygdala-Prefrontal Cortex Circuitry and Ventral Striatum as Developmental Targets*, NEUROSCI. BIOBEHAV. REV. 1, 6 (2016).

¹²²Brogan, *supra* note 120.

¹²³Rebecca E. Martin & Kevin N. Ochsner, *The Neuroscience of Emotion Regulation Development: Implications for Education*, CURR. OPIN. BEHAV. SCI., 1, 2 (2016).

¹²⁴*Id. passim.*

c. External Factors: Fact Patterns to Consider

1. Parental Refusals to Obtain Help; Obstruction of Potentially Life-Saving Measures, Including Therapies

Whether due to stigma or discrimination, lack of access, or deficiencies in knowledge of the treatability of mental health issues and illnesses, 67% of individuals suffering from mental illness in the United States, including youths and teens, go without mental health treatment by healthcare staff.¹²⁵ In many cases of minor suicide, the deceased child sought assistance from their parent – and their parent refused to help.¹²⁶ Perhaps the most common variation of this situation would be where the parent failed or refused to procure potentially lifesaving therapy services.¹²⁷

Taking the first step in seeking mental health help can be an enormous challenge in and of itself.¹²⁸ Those in need of help may themselves consider therapy something only “crazy people” need – a label that a child suffering from anxiety or depression will surely seek to avoid.¹²⁹ Then, when therapy is refused by someone as influential as a parent or guardian, the shame that can follow can exacerbate these underlying stigmas and compound the feeling of helplessness, hopelessness, and fear.¹³⁰ This growing shame, paired with the underlying depression, anxiety, other mental illness, or substance abuse at issue, still untreated, may increase the likelihood that the child chooses to die by suicide.¹³¹

Indeed, most states require parental consent before a minor can enroll in therapy services.¹³² These laws create the potential for parents to refuse consent for any reason, leaving the child untreated and often worse off than before they sought help.¹³³ While there has been a movement away from this parental consent requirement in some states, the consent requirement continues to provide a barrier to many children and teens seeking help.¹³⁴

¹²⁵See Graham Thornicroft, *Stigma and Discrimination Limit Access to Mental Health Care*, 17 EPIDEMIOLOGY PSYCH. SCI. 1, 1 (2008).

¹²⁶See, e.g., Adryan Corcione, *How to Find a Therapist When Your Parents Won't Help*, TEEN VOGUE (Aug. 29, 2017), <https://www.teenvogue.com/story/how-to-find-therapist-parents-wont-help> (“It can be extremely difficult for a teen to admit to their parents they want to seek therapy, especially if the parents already have preconceived idea of what therapy actually is.”)

¹²⁷See, e.g., *Id.*

¹²⁸Jeremy Divinity, *Never be Ashamed of Seeking Help*, NATIONAL ALLIANCE ON MENTAL HEALTH, <https://www.nami.org/Personal-Stories/Never-Be-Ashamed-of-Seeking-Help> (“[Those seeking mental health help] don't want to be defined as weak or incompetent, or even worse, seen as unable to take care of ourselves”).

¹²⁹*Id.* (This [stigma] was something that I believed and it prevented me from ever stepping foot in a therapist office...which in turn, prolonged my recovery”).

¹³⁰See, e.g., *My parents won't let me go to therapy even though I need it. What do I do?*, QUORA, <https://www.quora.com/My-parents-wont-let-me-go-to-therapy-even-though-I-need-it-What-do-I-do> (Shirley Huang: “I talked to my parents everyday about therapy to the point where I was crying, and disappointed”) (Mary Dickson: “My parents won't let me go [to therapy] because it costs money and think I can just talk to them, like it's that easy...its [sic] like living in hell”) (Anonymous: “My parents are telling me that I should 'grow up' and control myself”) (Anonymous: “[My mother] thinks I'll get her in trouble”); see also *My parents say they won't get me a therapist, I'm 16 and depressed, badly. Is there any other way to get one?*, QUORA, <https://www.quora.com/My-parents-say-they-wont-get-me-a-therapist-Im-16-and-depressed-badly-Is-there-any-other-way-to-get-to-one;I-m-a-minor-and-I-need-mental-help-pretty-urgently.I-ve-told-my-parents-but-they-wont-get-me-a-therapist-What-do-I-do>.

¹³¹See David Kealy, Matt S. Treeby, & Simon M. Rice, *Shame, Guilt, and Suicidal Thoughts: The Interaction Matters*, 60(3) BRITISH J. OF CLINICAL PSYCH. 414, 414 (“Findings emphasize consideration of generalized shame and guilt - and their interaction - when working with patients exhibiting suicidal thoughts”).

¹³²See, e.g., *I'm Under the Age of 18; Does My Parent Have to Give Permission for Me to Go to Therapy?*, GoodTherapy (last visited Dec. 2022), <https://www.goodtherapy.org/blog/faq/does-my-parent-have-to-give-permission-for-me-to-go-to-therapy> (noting the potential obstacle parental consent laws can pose to teens seeking help).

¹³³See, e.g., Ray Glier, *Seeking Mental Health Support: Teens Helped Pass New Law to Access Mental Health Care Without Parental Consent*, YOUTH TODAY (Mar. 4, 2016), <https://youthtoday.org/2016/03/seeking-mental-health-support-teens-helped-pass-new-law-to-access-mental-health-care-without-parental-consent/> (describing the successful teen efforts to remove parental consent requirements for therapy in New Jersey: “Then, we were at a field trip at a medical center, and I realized I needed help ... But when I tried to go into therapy, my mother refused, so that's where a lot of the idea [to change the law] came from.”) (quoting teen activist Jordan T.).

¹³⁴See, e.g., GoodTherapy, *supra* note 132.

In some cases, it is the teens seeking mental healthcare themselves that are leading the drive against parental consent laws.¹³⁵ In 2016, student activists affiliated with the Boys & Girls Club in New Jersey earned a huge victory when the “Boys & Girls Club Keystone Law”¹³⁶ was signed into law.¹³⁷ The new law “allows minors [sixteen years old and older] to consent to temporary, outpatient, behavioral-health-care services for the treatment of mental illness or emotional disorders” without authorization by a parent or guardian.¹³⁸ Importantly, if a minor seeks treatment under this law, the rules of confidentiality in treatment apply as if the patient were an adult.¹³⁹ This means that information about the child’s mental state and treatment cannot be disclosed to their parents without the child’s consent, often a necessary condition for at-risk youth to willingly seek help.¹⁴⁰ The landscape of adolescent privacy laws in other states is varied and inconsistent, with some states lacking explicit laws on the topic altogether.¹⁴¹

Treatment refusals by parents or guardians may stem from a lack of understanding of what therapy is and what it can accomplish.¹⁴² There are many different kinds of therapy currently in use by therapists and psychologists.¹⁴³ In fact, many practicing therapists may draw from multiple theories of psychotherapy across their practice and even within a single session with a patient.¹⁴⁴ Broadly speaking, the five categories of therapy techniques include: (1) psychoanalysis and psychodynamic therapies, (2) behavior therapy, (3) cognitive therapy, (4) humanistic therapy, and (5) integrative or holistic therapy encompassing and combining the preceding four categories into an adaptive approach.¹⁴⁵ Given this complex landscape of overlapping techniques and theories, it is important that the patient, or their parents, if involved, understand the techniques and goals of therapy.¹⁴⁶ This understanding must go beyond the initial choice of therapist, evolving to match a minor patient’s ongoing needs.¹⁴⁷

A broad range of factors may underlie a parent’s failure to procure the requested treatment.¹⁴⁸ Some considerations are unavoidable, such as monetary concerns or geographical and transportation barriers to therapy access. Others, however, may stem from the parent’s own perception of therapy or fear of what others may think.¹⁴⁹ As noted, parental medical decision making is often given great deference by the legal system.¹⁵⁰ However, states are often able to intervene if the decision making threatens the life of the child.¹⁵¹ By the time this happens, if it happens at all, it may be too late.

¹³⁵See Glier, *supra* note 133 (“It happened all because a teen in need got busy with his peers in an after-school group and they worked to change the law”).

¹³⁶HEALTH CARE PROVIDERS—CHILDREN AND MINORS—CONSENT, 2015 NJ Sess. Law Serv. Ch. 287 (ASSEMBLY 3435) (WEST)

¹³⁷Glier, *supra* note 133.

¹³⁸*Boys and Girls Club Keystone Law*, NEW JERSEY DEPARTMENT OF CHILDREN AND FAMILIES, chrome-extension://efaidnbmninnibpcjgcldefindmkaj/https://www.nj.gov/dcf/families/Keystone-Law-FAQ.pdf (last visited Dec. 2022).

¹³⁹See *id.*

¹⁴⁰See *id.*

¹⁴¹See Abigail English and Carol A. Ford. “Adolescent Consent and Confidentiality: Complexities in Context of the 21st Century Cures Act.” *PEDIATRICS* 149.6 (2022).

¹⁴²See Thornicroft, *supra* note 125.

¹⁴³See *Types of Therapy*, PSYCH. TODAY, <https://www.psychologytoday.com/us/types-of-therapy> (last visited Dec. 2022) (listing seventy different types of therapy as diverse as art or music therapies as well as more traditional psychoanalysis).

¹⁴⁴See *Different Approaches to Psychotherapy*, AM. PSYCH. ASS’N, <https://www.apa.org/topics/psychotherapy/approaches> (last visited Dec. 2022) (“A theory of psychotherapy acts as a roadmap for psychologists: It guides them through the process of understanding clients and their problems and developing solutions”).

¹⁴⁵See *id.*

¹⁴⁶See, e.g., *id.*

¹⁴⁷See, e.g., *id.*

¹⁴⁸Reardon, T., Harvey, *What Do Parents Perceive are the Barriers and Facilitators to Accessing Psychological Treatment for Mental Health Problems in Children and Adolescents? A Systematic Review of Qualitative and Quantitative Studies*, 26 *EUR. PSYCH. CHILD. & ADOLESCENT.*, 623, 642 (2017).

¹⁴⁹*Id.*

¹⁵⁰Goldstein, *When Can a Parent Deny Medical Treatment to a Minor Child?*, *LAWINFO*, Jan. 29, 2021, <https://www.lawinfo.com/resources/insurance/health-insurance/when-can-a-parent-deny-medical-treatment-to-a.html>.

¹⁵¹*Id.*

2. Abuse by a Parent

Another tragically common factor underlying a child's decision to take their own life could, potentially, be ongoing or acute abuse enacted on the child by a parent or guardian.¹⁵² Social science studies have definitively shown that sexual, physical, and emotional abuse of a child, as well as physical and emotional neglect, or a combination of abuses and neglect, are associated with higher rates of attempted suicide as a minor and later in life.¹⁵³ This correlation is particularly alarming when viewed in conjunction with the fact that 12.5% of children in the United States will experience some form of childhood maltreatment by the time they turn eighteen.¹⁵⁴

Abuse or neglect of a child can result in immediate injuries that may heal over time, but can also result in lifelong physical and mental harm.¹⁵⁵ Abuse victims may be at greater long-term risk for physical maladies including and as varied as diabetes, lung disease, cancer, or chronic fatigue conditions.¹⁵⁶ Given that chronic illnesses likewise coincide with increased rates of suicidal ideation, attempts, and completion, the ongoing risk to abused youth is clear.¹⁵⁷ Notably, child abuse and neglect has been associated with defects in the formation of areas of the brain such as the amygdala, hippocampus, orbitofrontal cortex, and corpus callosum, among others.¹⁵⁸ As previously stated, these regions of the brain are crucial to healthy emotional regulation, learning and memory, decision-making, and arousal.¹⁵⁹ Further, childhood maltreatment increases the risk of depression, anxiety, and post-traumatic stress disorder, and may lower the effectiveness of antidepressant treatments later in life.¹⁶⁰ Even outside the tangible, diagnosable, and quantifiable mental and physical effects of child abuse, it is impossible not to note the sheer horror of these experiences.¹⁶¹

In addition to abuse at home, bullying by peers at school or related contexts is likewise a well-documented factor contributing to the alarming rates of child suicide.¹⁶² While the focus of this Note is the role of parental figures and legal guardians as external factors in the suicide deaths of minors, rather than classmates and peers, it is worth noting that the effects of bullying may show up as warning signs at home.¹⁶³ For example, Daniel Scruggs was the target of continuous teasing and vicious bullying prior to his death.¹⁶⁴ As a result, Daniel would intentionally soil himself as a way to avoid attending school or to be sent home early.¹⁶⁵ All told, Daniel was absent forty four days during the school year before his suicide.¹⁶⁶ His mother, Judith, failed to respond to this warning signs, however; there was “no therapist, and no intervention targeting [Daniel’s] hygiene.”¹⁶⁷ This kind of neglect in failing to identify a child’s reaction to bullying functions similarly to more direct abuses at home when considering external causes to minor suicide.

¹⁵²See e.g., Angelakis, et al., *supra* note 91.

¹⁵³See, e.g., *id.* at 1.

¹⁵⁴*Id.* (citing Wildeman C., et al., *The Prevalence of Confirmed Maltreatment Among US Children, 2004 to 2011*, JAMA Pediatr. 2014;168(8):706-713.).

¹⁵⁵Child Welfare Information Gateway, *Long-Term Consequences of Child Abuse and Neglect*, CHILDREN’S BUREAU (Apr. 2019).

¹⁵⁶*Id.* at 2.

¹⁵⁷See, e.g., Katie Willart Virant, *Suicide and Chronic Illness*, Psychology Today (Sep. 14, 2021), <https://www.psychologytoday.com/us/blog/chronically-me/202109/suicide-and-chronic-illness>.

¹⁵⁸See Child Welfare Information Gateway, *supra* note 155 at 2.

¹⁵⁹*Id.*

¹⁶⁰*Id.* at 3.

¹⁶¹See, e.g., *Survivor Stories*, RAINN (Accessed Dec. 2022), rainn.org/STORIES.

¹⁶²*The Relationship Between Bullying and Suicide: What We Know and What It Means for Schools*, NATIONAL CENTER FOR INJURY PREVENTION CONTROL (2014), chrome-extension://efaidnbmninnibpcjpcglcfindmkaj/<https://www.cdc.gov/violenceprevention/pdf/yv/bullying-suicide-translation-final-a.pdf>.

¹⁶³Gardianos, *supra* note 14.

¹⁶⁴See *id.*

¹⁶⁵See *id.*

¹⁶⁶See *id.* at 206.

¹⁶⁷*Id.* at 208.

3. Parental Negligence Allowing Ease of Access to Method of Suicide

Given the lack of control most minors have over their own lives, access to certain items may determine how individuals will attempt to end their life.¹⁶⁸ Indeed, the vast majority of suicides committed by minors occur in their own home – usually in the child’s bedroom.¹⁶⁹ The most common method of suicide is by hanging at 78.4% of minor suicides, likely due to ease of access of necessary materials without the negligence of others.¹⁷⁰ The next most common method, with the top two methods accounting for nearly all minor suicides, is by firearm.¹⁷¹ Alarming, but unsurprisingly, in all cases where firearm storage method was known, the firearm in question was not stored safely by the owner.¹⁷² In every case where such information was available, it was irresponsible firearm ownership that provided the minor access to the deadly weapon they ultimately used to take their own life.¹⁷³

Advocates of safe firearm ownership describe proper storage as keeping the gun, unloaded, in a locked location inaccessible from children.¹⁷⁴ Such guidelines also encourage the use of trigger locks, cable gun locks – a chord strung through the barrel of the weapon and locked in a loop to prevent loading and firing – as well as storing different parts of the weapon separately, if possible, along with separate storage of ammunition.¹⁷⁵ These precautions are especially crucial when a gun owner lives with someone with a history of mental illness or suicidal ideation, able to prevent both accidental and intentional deaths.¹⁷⁶

In many states, statutory law makes irresponsible gun storage a criminal offense.¹⁷⁷ For example, Massachusetts, which boasts the lowest gun death rate in the country, requires guns be stored in a locked container or otherwise rendered inoperable by a lock.¹⁷⁸ Violations of this statute can result in a fine between \$1,000 and \$7,500 along with imprisonment up to one and a half years.¹⁷⁹ In cases of high capacity weapons, fines can reach \$15,000 and imprisonment up to twelve years.¹⁸⁰ Similarly, New York mandates storage of firearms in “an appropriate safe storage depository” or otherwise rendered unusable for all individuals residing with children under the age of eighteen.¹⁸¹ Failure to follow these guidelines is a misdemeanor, Class A,¹⁸² punishable by a fine up to \$1,000 and imprisonment of up to one year.¹⁸³ Relatedly, New York’s gun death rate of 3.9 per 100,000 is the second-best rate in the country. By contrast, Mississippi, Alaska, Louisiana, Mississippi, and Alabama, among others in the south and west of the United States, have no laws pertaining to safe storage of firearms whatsoever.¹⁸⁴ Mississippi’s gun death rate is 24.2 per 100,000, Alaska’s is 22.4 per 100,000, Louisiana’s is 22.1 per 100,000, and Alabama’s is 22, representing some of the worst rates in the country.¹⁸⁵

¹⁶⁸Hepp, et al., *Methods of Suicide Used by Children and Adolescents*, EUR. CHILD ADOLESCENT PSYCH. 2012 Feb;21(2):67-73

¹⁶⁹National Institute of Mental Health, *Understanding the Characteristics of Suicide in Young Children* (Dec. 14, 2021) <https://www.nimh.nih.gov/news/research-highlights/2021/understanding-the-characteristics-of-suicide-in-young-children> (95.5% of minor suicides occur at home, 65.6% of those in the child’s bedroom) [hereinafter NIMH Youth Suicide Characteristics].

¹⁷⁰*Id.*

¹⁷¹*Id.* (Firearm deaths account for 18.7% of suicide deaths of minors, per NIMH research).

¹⁷²*Id.*

¹⁷³*See id.*

¹⁷⁴*See, e.g., Project Childsafe, A Guide to Responsible Gun Ownership, Safe Handling and Secure Storage*, (Accessed Dec. 2022).

¹⁷⁵*See id.*

¹⁷⁶*See id.*

¹⁷⁷*See Song Strong, Safe Gun Storage is a Bipartisan Issue* (Interactive Map), <https://www.songstrong.org/safe-gun-storage-laws-by-state/> [hereinafter Song Strong Interactive Map].

¹⁷⁸Mass. Gen. Laws Ann. ch. 140, § 131L (West)

¹⁷⁹*Id.*

¹⁸⁰*Id.*

¹⁸¹N.Y. Penal Law § 265.45 (McKinney).

¹⁸²*Id.*

¹⁸³*See Song Strong Interactive Map, supra note 177.*

¹⁸⁴*See id.*

¹⁸⁵*Id.*

At the federal level, congressional representatives DeLauro, Larson, Hayes, Courtney, and Himes introduced a bill known as “Ethan’s Law” in February of 2021.¹⁸⁶ This bill, if enacted, would make it unlawful to store firearms in such a way that “a minor is likely to gain access to the firearm without the permission of a parent or guardian.”¹⁸⁷ The bill reflects the law passed under the same name in Connecticut,¹⁸⁸ which arose when a minor, Ethan, was accidentally shot and killed by an unsecured gun at a neighbor’s house.¹⁸⁹ Since passage of Ethan’s Law, Connecticut’s gun death rate of 5.3 per 100,000 ranks sixth best in the country.¹⁹⁰ The federal version of the bill, however, has not proceeded since its introduction before the House of Representatives.¹⁹¹

The would-be federal law notes that an estimated 4,600,000 children live in a home that contains at least one unsecured firearm.¹⁹² Likewise, the bill states that 73% of children under the age of ten reported knowing where their parents stored their firearms.¹⁹³ 36% of those children had handled unsecured firearms in the home.¹⁹⁴ Given these statistics as a backdrop, Ethan’s Law points to the increased risk of youth suicide as well as other dangers posed by unsecured guns and ammunition – accidental deaths as well as firearm theft.¹⁹⁵ Violations of the law, generally, would result in fines up to \$500.¹⁹⁶ However, should a violation result in an injury or death of a minor, the penalty could include up to five years of imprisonment.¹⁹⁷

IV. Ensuring Liability beyond the Restatement Approach

The general trend in tort law is one away from the suicide rule and towards the Restatement view of scope of liability. While this is the appropriate response in most cases, child suicides are a particularly tragic occurrence and should be treated as the special cases they are. The law should do everything in its power to cut down the alarming suicide rates among minors, including wielding potential liability as a deterrent of certain conduct, or to encourage other actions. This section will begin by discussing the need for liability, before putting forth a solution in greater detail.

a. The Need for Suicide Liability

Adam Tonn’s death was deemed “unforeseeable,”¹⁹⁸ making legal action impossible even under the modern Restatement approach to legal causation and scope of liability. However, tragedies of this kind are hardly rare.¹⁹⁹ Countless children and teens in the United States suffer from depression, anxiety, or similar and related mental illnesses every day. Others suffer bullying at school or physical, sexual, or

¹⁸⁶See H.R. 748, 117th Congress (2021).

¹⁸⁷*Id.* at 4.

¹⁸⁸The Office of Governor Ned Lamont, *Governor Signs Ethan’s Law to Strengthen Requirements on the Safe Storage of Firearms in the Home*, STATE OF CONNECTICUT (June 13, 2019), <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2019/06-2019/Governor-Lamont-Signs-Ethans-Law-to-Strengthen-Requirements-on-the-Safe-Storage-of-Firearms>.

¹⁸⁹See Song Strong Interactive Map, *supra* note 17.

¹⁹⁰See *id.*

¹⁹¹See *Actions Overview H.R. 748 – 117th Congress (2021-2022)*, CONGRESS.GOV (Accessed Dec. 2022), <https://www.congress.gov/bill/117th-congress/house-bill/748/actions?q=%7B%22search%22%3A%5B%22ethan%27s+law%22%2C%22ethan%27s%22%2C%22law%22%5D%7D>.

¹⁹²See H.R. 748, *supra* note 186 at 1.

¹⁹³*Id.* at 2.

¹⁹⁴*Id.*

¹⁹⁵*Id.*

¹⁹⁶*Id.* at 4.

¹⁹⁷*Id.* at 5.

¹⁹⁸*Id.* at *3.

¹⁹⁹Though Adam Tonn had seen a psychologist for behavioral issues prior to his death, there was no evidence Adam sought additional help that was not forthcoming. Tonn, 2013 WL 1858773 at *3. This section, instead, discusses possible obstacles to suicide prevention, generally.

emotional abuse or neglect at home at alarming rates. In many cases, these children, in their desperation, will seek help – oftentimes from their parent, stepparent, caretaker, or legal guardian. How parents and guardians react to crisis situations – and how they react to requests for help, specifically – can be extremely formative, influencing the child’s long-term health and well-being.

For a number of reasons, the necessary help may never come. Perhaps for their religious, moral, or (incorrect) scientific beliefs, their parent will refuse to arrange for needed therapies or medication. Perhaps the parent will shame the child for what they are experiencing, claiming depression is “all in their head” or easy to cure by simply “cheering up,” changing their outlook on life, or spending more time outside – actually making matters worse by instilling feelings of guilt in the child and furthering the child’s confusion. In other instances, the parent’s general neglect or more direct abuses, whether it be physical, sexual, mental, or emotional, may be underlying or exacerbating factors contributing to the child’s mental distress. In cases such as Adam Tonn’s, ease of access to deadly weapons or prescription medications caused by a parent or guardian’s negligence may increase the likelihood any suicide attempt will be successful. In all too many cases, the lives of these children will end before they reach adulthood.

Parents, relatives, and friends of the deceased child will surely be left feeling shocked, lost, and hopeless. Further, the parent or parents, described above, that failed or refused to obtain necessary treatment, or more directly contributed to the child’s desperation through emotional or physical abuse, neglect, or other negligence will face no consequences before the law. Indeed, in many cases neither criminal nor civil law provides an answer. When, as in many cases, the statute of limitations has run on the abuse or the refusals, failures, or neglect of a parent do not rise to criminal levels, while still contributing to the child’s mental distress, there will be no criminal repercussions for the abusive or neglectful parent. In the absence of criminal ramifications, friends and family members may want to seek remedy in tort. Specifically, one parent may want to bring a wrongful death suit against the other parent who they believe was at fault or contributed to their child’s suicide through abuse or neglect.

On the one hand, the Restatement approach at least opens the possibility of liability in cases of suicide by making obsolete previously contemplated barriers to legal causation.²⁰⁰ However, the issue of foreseeability will continue to pose a barrier to liability.²⁰¹ Take, for example, the facts of the *Tonn* case. On the one hand, the Restatement view negates the idea that the suicide is itself, inherently and in every case, an intervening cause breaking the chain of causation as to any third party.²⁰² However, “The psychologist Adam had twice seen for behavioral issues also reported that Adam had shown no signs of depression and had given ‘no indications’ that he would commit suicide.”²⁰³ A jury would likely find his death unforeseeable as a matter of fact, and the harm caused would be viewed as out of the scope of liability of the negligent gun storage. Such negligence would go unanswered.

Potential parental or guardian liability in the wake of a child’s suicide would not, of course, truly remedy the tragedy that occurred.²⁰⁴ However, parental liability suits might serve a purpose analogous to the theory wherein medical malpractice suits serve to improve medical care for other patients in the future.²⁰⁵ In other words, parental liability in high profile wrongful death suits might serve to educate the public on suicide prevention measures²⁰⁶ and support efforts to make such prevention efforts more ubiquitous across parents in an attempt to limit future child suicides.²⁰⁷ Additionally, the potential for wrongful death liability following a suicide could open the door towards some modicum of justice

²⁰⁰RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 29 (2010); see also, *supra*, Section I, II.

²⁰¹See, e.g., Tonn, 2013 WL 1858773 at *3.

²⁰²See, *supra*, Section IIa (noting the erosion of the suicide rule).

²⁰³Tonn, 2013 WL 1858773 at *3.

²⁰⁴*Id.* at 202-203.

²⁰⁵See, e.g., Michael Frakes & Anupam B. Jena, *Does Medical Malpractice Law Improve Health Care Quality?* 143 J. Pub. Econ. 142 (2016) (contextualizing medical malpractice liability as setting the standard of care and, potentially, therefore, improving general quality of care).

²⁰⁶See NIMH FAQs, *supra* note 112 (outlining some potentially beneficial treatments only available through proactive action, such as certain therapies).

²⁰⁷*Id.*

regarding underlying abuse or neglect otherwise barred from legal remedy - for example, due to the running of the statute of limitations.²⁰⁸

b. Solution to Consider: Assuming Foreseeability in Certain Circumstances

As noted, the Restatement approach provides an avenue for third parties to be held liable in tort in some cases of suicide, but not all. Minor suicides are particularly alarming, and liability is all the more desirable as a result. In order to truly yield justice after minor suicide, as well as to serve the purposes of deterrence and raising awareness, liability must be ensured in certain egregious cases. There are a number of situations where certain activity – or intentional inactivity – by a parent, guardian, or similar should, on its own, allow liability even if the suicide was not otherwise determined to be foreseeable. In other words, suicide should always be considered a foreseeable result of certain conduct instead of being put to a case-by-case jury analysis.

As proposed here, if plaintiffs and prosecutors are able to establish that a parent or guardian refused requests for help or neglected to respond to warning signs of suicide, abused the child physically, emotionally, or sexually, or was negligent in enabling the method of suicide, there will be no need for a jury to consider whether the child's suicide was a foreseeable result of the conduct. Instead, the foreseeability piece will be given as a matter of law, allowing remedy in tort. If evidence of these activities and inactivity can be established, there should be no burden on the plaintiff to prove the harm was one of the risks making the conduct unreasonable – that would be assumed.

The list contained within this Note covering parental refusals and neglect, abuse by a parent or guardian, and parental negligence as to accessing the method of suicide is not intended to be exclusive nor exhaustive. Instead, these are areas the courts should consider as initial thresholds towards expanding liability following the suicide of a minor. In other words, courts should consider external causes of child suicide comfortably established by social science as opposed to strictly viewing suicide as a phenomenon with a purely internal cause. As previously noted, the most common example of such suits would likely be one parent or guardian bringing a wrongful death action against another parent or guardian as in the *Tonn* and *Laytart* cases, relying on this theory to establish liability. Of course, it is not impossible for both parents to be jointly culpable in refusals to provide necessary assistance to a child in crisis, parental abuse, or negligence regarding the method of suicide used, with liability divided following traditional tort law principles.

In the first example, parental refusals to obtain help, the threshold facts would need to be egregious to trigger an assumption of scope of liability. Courts should seek testimony establishing repeated requests on the part of the child and the existence of other ongoing warning signs. Direct parental abuse, on the other hand, may prove easier to establish. Any factual proof of abuse as defined by federal law and state regulation would be sufficient to trigger the foreseeability assumption. In other words, suicide should automatically be considered a foreseeable result of parental abuse. Finally, evidence of the kind put forth in the *Tonn* case would be adequate to allow the assumption to apply. Indeed, many states have passed gun storage requirements, the violation of which could serve as prima facie evidence that the necessary underlying conduct had occurred.

Under the theory proposed in this Note, simply proving that certain conduct including parental refusal to obtain help, abuse by a parent, or parental negligence as to method of suicide occurred will be enough to satisfy foreseeability element of a scope of liability analysis within a wrongful death or similar tort suit much like the processes utilized in *res ipsa loquitur*, strict liability, and *per se* theories of liability. This will serve to encourage access to suicide prevention such as therapies or substance abuse intervention before irreversible damage is done. Indeed, in order to best serve the public policy goal of parental

²⁰⁸See, e.g., Donna J. Dempster, *Minor's Lawsuit Against Parents for Abuse*, 18 J. Juv. L. 305 (1997) (describing a case hinging on the statute of limitations for cases of sexual abuse by parents against minors).

education on child suicide and its causes, the situations that will trigger the assumption must be based on established contributors to child and teen suicides.²⁰⁹

In practice, this shortcut to liability would hinge on a logical analysis based on the facts established leading to a practical legal conclusion. For example, this Note is not suggesting that evidence of a parent's negligent firearm storage should be brought in when the cause of death was suicide by hanging or drug overdose – the lack of factual causation there is clear. Nor should the assumption of legal causation be treated as strict liability, exactly. Instead, this solution appeals to the logical assumption that therapies and other intervention could have made a difference, for example, and therefore negligent failure to provide such intervention should be actionable without making the often-volatile scope of liability argument.

This Note acknowledges this solution may appear extreme on first blush, but is rather simply the next step in the evolving tort structure as well as changing views of mental health and suicide. After all, suicide of minors should be treated as the extreme that it is – a widespread tragedy. Children under the age of eighteen take their own lives at a rate of five deaths per day – roughly one out of every six deaths in this age group is a suicide.²¹⁰ This alarming rate is only increasing. The adults that let these children down prior to their deaths should be held accountable. To that end, sacrificing the case-by-case causation analysis is warranted. The rule, instead, will be simple: suicide is always the foreseeable result of this conduct, and therefore liability is warranted.

V. Conclusion

The prevalence of suicide among children and teens is alarming – and increasing. There is no single solution to addressing this widespread issue. After all, there is no single cause of suicide, and each death will prove different. However, the legal system is in a unique position to influence public perception of suicide by shifting the potential for liability following a suicide death. In the criminal context, this has already been contemplated in the Scruggs and Carter cases. However, tort suits like the Tonn case have failed to provide liability and accountability for the underlying causes of suicide. By treating the suicide of a child as an extreme case and assuming foreseeability to place the harm of suicide within the scope of liability when a parent or guardian has acted in a certain way, courts would be saying: “This death was not just the fault of the child.” This is an important consideration in fighting the underlying causes of suicide in order to make sure fewer and fewer children lose their lives in this tragic manner.

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²⁰⁹*Teen Suicide*, STANFORD CHILDREN'S HEALTH (last visited Dec. 2022), <https://www.stanfordchildrens.org/en/topic/default?id=teen-suicide-90-P02584>.

²¹⁰See WISQARS, *supra* note 108.