Adolescent Suicide: A Call for Parental Liability

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“What a child doesn’t receive he can seldom later give.”

INTRODUCTION

What is worse?: Discovering that your 12-year-old son took his own life or having it take almost a full day before realizing he had done so? Both of these disturbing fates met Judith Scruggs when, on January 2, 2002, she discovered that her 12-year-old son, Daniel, had committed suicide by hanging himself in his closet with a necktie. Judith made the grisly discovery more than twelve hours after Daniel had died. In 2003, Connecticut prosecuted Judith Scruggs on a risk of injury theory based on the fact she neglected to take any parental action when her son failed to shower or to attend school, and regularly soiled himself in order to get sent home from school. The high court in Connecticut overturned the conviction against Scruggs, finding the state statute to be unconstitutionally vague. Despite this reversal, the case is still remarkable, because it represents the first time a parent has been held legally responsible for a child’s suicide.

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1 P.D. JAMES, TIME TO BE IN EARNEST 8 (Randomhouse, Inc. 1999).

2 See Diane Scarponi, Mother on Trial in Suicide of 12-Year-Old Son, ADVOC., Sept. 24, 2003, at A10 (noting that Judith Scruggs was not concerned when she did not see Daniel asleep in bed because of his past behavior of sleeping in his sister’s room or in his closet); see also Suicide of a 12-Year-Old, CBS NEWS, Oct. 29, 2003, http://www.cbsnews.com/stories/2003/10/28/601/ /printable580507.shtml (explaining that Judith Scruggs discovered Daniel’s body during a stop at home between her two jobs, in a closet where his body had “been hanging ... all day”).


4 People v. Scruggs, 905 A.2d 24, 40 (Conn. 2006) (deciding that the risk-of-injury statute that Judith Scruggs was convicted under was unconstitutionally vague).

5 See Mother Convicted of Contributing to Child’s Suicide, FOX NEWS, Oct. 6, 2003, http://www.foxnews.com/story/0,2933,99271,00.html (“[T]he case may mark the first time a parent has been convicted of contributing to a child’s suicide.”); Suicide of a 12-Year-Old, supra note 2 (“It was one of the first times a parent has been charged in connection with a child’s suicide.”).
The prosecution of Judith Scruggs ignited a national debate about the responsibility of parents for their children's suicides; it received both criticism and support. This Note argues that parental emotional neglect is a contributing factor in teenage suicide, and needs to be redressed by either family or criminal law. In addition, this Note argues that suits should be brought against parents who emotionally neglect their offspring and that courts should not shy away from this type of litigation. There are two reasons for this conclusion. The first is that suicide is an emotional act and parents have a direct effect on the emotional well-being of their children. The second reason draws a parallel to schools. Schools have long been held liable for student suicide. If schools can be held to a legal standard, then parents should be held to an even higher standard of responsibility.

Part I of this Note provides a statistical look at suicide among teenagers in the United States, and presents the tragic story of Daniel Scruggs. Part II examines the notion of children as emotional-beings and describes how parental failure directly affects the emotional stability and growth of children. Part III explores school liability for student suicide by reviewing cases where parents successfully brought actions against school districts for failure to warn parents of a child's peculiar behavior prior to the child's suicide. Finally, Part IV suggests that parents who fail to notice suicidal signs in their teenage children should be held to a standard of care for their children that is similar to or greater than the specific standard parents apply when the child is in a school's custody. It is the duty of child welfare agencies to bring suits against parents who turn a blind eye to their child's needs and behavior and fail to take action. Additionally, when a child is successful in his suicide attempt, prosecutors should also evaluate the parents' potential criminal liability for emotional neglect. While such legal actions will not eliminate the problem of suicide among teenagers, they


7 See Eric C. Shedlosky, Protecting Children from the Harmful Behavior of Adults, 98 J. CRIM. L. & CRIMINOLOGY 299, 302 (2007) ("Judith's trial and the public debates that ensued from her conviction raised an important question regarding the appropriate roles of parents and the state in raising and protecting children."); Suicide of a 12-Year-Old, supra note 2 (noting that parenting is a subjective issue that should not be managed by a court).
may diminish the number of instances that could have been prevented by proper parenting.

I. TEEN SUICIDE: A GROWING EPIDEMIC

A. Suicide Among Teenagers

The death of Daniel Scruggs is now part of the grim statistics describing adolescent suicide.8 Suicide is the third leading cause of death in the United States among adolescents, representing 12.9% of all adolescent deaths.9 Only accidental deaths and homicides occur more frequently.10 Each day there are approximately 12 youth suicides. Statistically, every one hour and 54.5 minutes an adolescent takes his or her own life.11 In total, about 2,000 teenagers commit suicide and about 2,000,000 teenagers attempt to commit suicide each year.12 To further simplify these numbers, for every completed suicide there are between 100 and 200 attempted suicides.13 Approximately 8.5% of students in high school (grades 9 through 12)

8 For the purpose of this paper an adolescent is a child between the ages of 10 and 19. See Jennifer J. Connor & Martha A. Rueter, Parent-Child Relationships as Systems of Support or Risk for Adolescent Suicidality, 20 J. FAM. PSYCHOL. 143, 143 (2006). Furthermore, it should be noted that parental liability laws governing a child vary from state to state, depending on whether the age of majority in a jurisdiction is 18, 19 or 21. See Youth Rights Network, Age of Majority, http://www.youthrights.net/index.php?title=Age_of_majority (last visited Mar. 8, 2009).


10 YOUTH SUICIDE FACT SHEET, supra note 9, at 1 ("[A]ccidents and homicides occurred more frequently."). See NATIONAL ADOLESCENT HEALTH INFORMATION CENTER, 2006 FACT SHEET ON MORTALITY: ADOLESCENTS & YOUNG ADULTS (2006), http://nahic.ucsf.edu/downloads/Mortality.pdf (comparing 2003 data to support the position that adolescent deaths from accidents and homicides occurred more often than deaths from suicide).

11 See YOUTH SUICIDE FACT SHEET, supra note 9, at 1 (stating that daily suicide rate decreases to every two hours and eleven minutes if only including suicides of teenagers aged fifteen to twenty-four and increases when including suicides of youths under fifteen); AMERICAN ASSOCIATION OF SUICIDIOLOGY, U.S.A. SUICIDE: 2004 OFFICIAL FINAL DATA 1 (2006), www.suicidology.org/associations/1045/files/2004dataptgvl.pdf (suggesting that 10.4% of persons between fifteen and twenty-four committed suicide in 2004).

12 See Brett Koplin & Jean Agathen, Suicidality in Children and Adolescents: A Review, 14 CURRENT OPINION PEDIATRICS 713, 713 (stating the statistical reality of adolescent suicide rates); YOUTH SUICIDE FACT SHEET, supra note 9, at 1 (explaining that 4,316 of 32,439 suicides in 2004 were completed by persons between fifteen and twenty-four years of age).

13 See YOUTH SUICIDE FACT SHEET, supra note 9, at 1-2 (stating that .5 to 1% of suicide attempts are successful); 2004 OFFICIAL FINAL DATA, supra note 11, at 1 (explaining that approximately 811,000 suicide attempts were made in 2004 nationally).
reported attempting suicide in one recent study. A previous suicide attempt is a crucial risk factor for future completed suicides. It is likely that three students in a typical high school classroom in the United States have attempted to commit suicide in the past twelve months. It is estimated that the suicide of one person immediately affects at least six surviving people – generally, the family members and friends of the loved individual who committed suicide.

In a study conducted in 2004 by the Center of Disease Control, the suicide rate among females aged 10-19 and males 15-19 increased by 8.0%. Though the combined overall suicide rate declined from 1990 to 2003, the suicide rate of teenagers departed from this downward trend, and escalated upward in 2004. In youths aged 10 to 14, the suicide rate has increased 51% from 1981 to 2004.

Studies show that depression is the leading cause of suicide among adolescents. Today, approximately one in eight teenagers suffers from depression. In a study of the circumstances surrounding the deaths of all

14 See YOUTH SUICIDE FACT SHEET, supra note 9, at 1–2. This information is based on information in the 2003 Youth Risk Behavior Surveillance Survey (YRBSS). Id. Furthermore, the YRBSS reported that 16.9% of high school students seriously considered suicide in a twelve month period. Id. See also NATIONAL ADOLESCENT HEALTH INFORMATION CENTER, 2006 FACT SHEET ON SUICIDE: ADOLESCENTS & YOUNG ADULTS 3 (2006), http://nahic.ucsf.edu/downloads/Suicide.pdf. Statistics indicate that 10.8% of high school females and 6.0% of high school males attempted suicide in 2005.

15 See YOUTH SUICIDE FACT SHEET, supra note 9, at 2 (explaining the increased risk of suicide due to previous attempts); 2006 FACT SHEET ON SUICIDE: ADOLESCENTS & YOUNG ADULTS, supra note 14, at 1 (noting that female adolescents are more likely to attempt suicide than their peers).

16 See YOUTH SUICIDE FACT SHEET, supra note 9, at 3 (describing the prevalent nature of suicide among American adolescents); 2006 FACT SHEET ON SUICIDE: ADOLESCENTS & YOUNG ADULTS, supra note 14, at 1 (discussing how suicide was the third leading cause of death among youth between ages ten and twenty-four in 2003).

17 See U.S.A. SUICIDE: 2004 OFFICIAL FINAL DATA, supra note 11, at 1 (estimating that one of every sixty-five Americans were survivors of suicide in 2004); AMERICAN ASSOCIATION OF SUICIOLOGY, SURVIVORS OF SUICIDE FACT SHEET 1, http://www.211bigbend.org/hotlines/suicide/SurvivingSuicide.pdf (last visited Mar. 8, 2009) (hypothesizing that there are approximately 5 million American survivors of suicide from the last 25 years).

18 See Center for Disease Control and Prevention, supra note 9, at 905 (stating that an 8% increase was the largest single-year increase during the 1990-2004 period).

19 Id. at 905 (noting that results also showed an increase of suicide by both hanging/suffocation and poisoning among females aged ten to fourteen years and fifteen to nineteen years).

20 YOUTH SUICIDE FACT SHEET, supra note 9, at 2 (positing that 283 children aged ten to fourteen completed suicide in 2004). See Center for Disease Control and Prevention, supra note 9, at 906 (noting that suicides increased from fifty-six to ninety-four among females aged ten to fourteen years).

21 See YOUTH SUICIDE FACT SHEET, supra note 9, at 4–5 (stating that "depression plays a large role in suicide" and that it is a risk factor for suicide); Christopher K. Varley Psychopharmacological Treatment of Major Depressive Disorder in Children and Adolescents, 290 J. AM. MED. ASSOC. 1091, 1091, (2003) (noting that depression is a major risk factor associated with suicide).

22 See Kathryn Murphy, Recognizing Depression in Children, 29 NURSE PRACTITIONER 18, 19, Sept. 2004 (acknowledging that one in eight adolescents suffers from depression); About Teen Depression, Statistics - Adolescent Depression, http://www.about-teen-depression.com/depression-statistics.html (last visited Mar. 8, 2009) (confirming that one in eight teens suffers from
youth 11 to 16 years old, of those who committed suicide, about 50% were considered depressed by doctors, family members, and schoolmates.\(^\text{23}\) Sadly, only 25% of those youths deemed depressed were receiving any form of treatment for their mental illness at the time of death.\(^\text{24}\) There are a number of warning signs that can alert parents, teachers, and doctors to a teenager’s suicidal state.\(^\text{25}\) These include ideation, the expression or communication of a desire to kill oneself, withdrawal from friends and family, and dramatic mood changes.\(^\text{26}\) It is important for teenagers to be screened for these warning signs, as well as for depression and previous suicide attempts, in order to take the necessary steps to prevent suicide.\(^\text{27}\) While the effect of anti-depressants on youths has yet to be fully evaluated, there is strong evidence indicating that those adolescents who are treated for depression after attempting to commit suicide do not make a second attempt.\(^\text{28}\)
B. Daniel Scruggs – Mother Charged in Child’s Suicide

The story of Daniel Scruggs is tragic. Daniel, at twelve years old, was small for his age, weighing only 63 pounds. While he had a remarkably high IQ, he struggled with a learning disability and had poor verbalization skills. At school, Daniel was the target of vicious bullying. Besides his small stature, Daniel’s appearance was “dirty;” his clothes were filthy and mismatched, his breath was bad, and he would go days without showering. On a daily basis, Daniel was kicked, pushed, hit, and ridiculed by his fellow classmates. Sometimes the teachers would tell the students to stop bullying Daniel, but other times, they would ignore the bullying. Before winter recess, Daniel was absent 44 days and on the days Daniel attended school he soiled himself so that he would get sent home. These facts indicate that Daniel was afraid to attend school.

At home, Daniel lived with his mother, Judith Scruggs, and his

29 See Suicide of a 12-Year-Old, supra note 2 (describing that while Daniel Scruggs had a very high intelligence, his small size and learning disabilities made him a target for peer ridicule); OFFICE OF THE CHILD ADVOCATE, INVESTIGATION OF THE DEATH OF JOSEPH DANIEL S. (Jan. 2003) (hereinafter CHILD ADVOCATE) (identifying the methods of Daniel Scruggs’ bullying, as well as his low weight).
30 See Suicide of a 12-Year-Old, supra note 2 (emphasizing Daniel Scruggs’ high IQ and learning disability); CHILD ADVOCATE, supra note 29, at i (noting that Daniel Scruggs’ learning disability and inability to keep up with his classmates academically exacerbated Daniel’s delicate emotional condition).
31 See Suicide of a 12-Year-Old, supra note 2 (describing Daniel Scruggs as a loner who experienced continuous teasing); M. Lauren Gillies, Comment, Placing the Blame After the Suicide of a Minor: Analysis of State v. Scruggs and Connecticut’s Risk-of-Injury Statute, 5 CONN. PUB. INT. L. J. 131, 134 (2005) (stating that Daniel Scruggs was “tormented by his peers and had a hard time fitting in.”).
32 See CHILD ADVOCATE, supra note 29, at ii (describing Daniel’s appearance and clothing as dirty); Gillies, supra note 31, at 136 (noting that Daniel’s classmates would pick on him because of his poor hygiene, strong body odor, and intentionally defecating in his pants).
33 See Gillies, supra note 31, at 135 (recognizing that Daniel was fearful of other students’ harassment and violence based on their physical abuse and verbal attacks);
34 See Suicide of a 12-Year-Old, supra note 2 (explaining that the school faculty was not always responsive to the harassment that Daniel experienced; one of Daniel’s classmates said, “every day, every day, he was in school he was bullied . . . Sometimes teachers would tell the bullies to stop, but other times, they would just dismiss it. They would act like nothing was going on.”); see also YOUR SCHOOL AND THE LAW (LRP Publications 1999) (identifying that school officials should look out for bullying in the form of verbal intimidation and physical aggression. The article also notes that the most effective way to address bullying is by “taking the time to confront the problem.”).
35 See Suicide of a 12-Year-Old, supra note 2 (providing instances when Daniel would defecate on himself because he wanted the school to let him leave and return to his residence); see also Confronting Suicide Part I – Vulnerable people and perilous circumstances, HARV. MENTAL HEALTH LETTER, May 1, 2003 [hereinafter Confronting Suicide] (referencing “underlying long-term vulnerability and an immediate source of stress” as expressed through Daniel’s defecation can be suicide risk factors).
36 See Gillies, supra note 31, at 135 (recognizing that Daniel was fearful of other students’ harassment and violence based on their physical abuse and verbal attacks); YOUR SCHOOL and the LAW, supra note 34 (recognizing that “incidences of bullying are on the rise” and there is need for more severe penalties against student bullies).
seventeen-year-old half-sister, Kara. Judith Scruggs had five children and was divorced three times. Judith worked over sixty hours a week, primarily as a teacher's aide at Daniel's school and also as a part-time manager at a local Wal-Mart. Daniel slept with a knife under his mattress and had a spear in his closet. The house where Daniel lived was described as "beyond messy." There was debris, garbage, dirty clothes, and dishes piled high throughout the house. Daniel's bedroom was no exception, where the piles reached the height of his bed with only a small path carved out for him to walk. The condition of the house was described as a "dirty clothes hamper..." with "...fermented garbage on top of that."

Both Daniel's mother and his school failed to respond to Daniel's needs. Before Daniel's death, "there was no medical evaluation, no


38 See CHILD ADVOCATE, supra note 29, at 1 (looking at how Judith Scruggs raised Daniel in an unstable home environment with little parental control); see also Shedlosky, supra note 37, at 301 (mentioning the prosecution's attempt to make Judith Scruggs liable for "creating and maintaining a dangerous home environment and for negligently depriving ... [Daniel] of proper physical care").

39 See Suicide of a 12-Year-Old, supra note 2 (highlighting the fact that Daniel's mother had many other obligations including work and that she did not fully recognize the severity of her son's harassment); see also Lana Larson Dean, Public Education: Suicide: Wyke v. Polk County School Board, 28 STETSON L. REV. 910, 912-13 (1999) (dissecting thirteen-year-old Shawn Wyke's suicide by acknowledging that despite other responsibilities, employment, or issues, "[parents and society's] interests in the well-being of our children far outweigh the burden of making a phone call" or otherwise taking out the time to adequately address a child’s "overt acts...[and] blatant cry for help").

40 See Suicide of a 12-Year-Old, supra note 2 (referencing the four kitchen knives and one homemade spear that the law enforcement officials found in Daniel's closet after Daniel's suicide); see also Confronting Suicide, supra note 35 (stating suicidal situations often stem from "severe episodes of depression, anxiety, or psychosis - [that] lead vulnerable people to perform desperate self-destructive acts").

41 See Suicide of a 12-Year-Old, supra note 2 (describing the conditions of the Scruggs's home, as they were discussed in the arrest warrant, as both unsafe and appalling); Marc Santora, After Son's Suicide, Mother is Convicted over Unsafe Home, N.Y. TIMES, Oct. 7, 2003, at B1, available at http://query.nytimes.com/gst/fullpage.html?sec=health&res=980DEED6103CF934 A35753CA965C8B63 (stating that although the Scruggs' home was well-maintained on the outside, the inside was quite dirty).

42 See Suicide of a 12-Year-Old, supra note 2 (quoting a detective who stated that in some places inside the Scruggs' home, the piles of mess covered debris such as old Christmas presents and glass mirrors); see also Lynne Tuohy, Court Ends Scruggs' 'Hell,' HARTFORD COURANT, Aug. 29, 2006 (detailing an officer's testimony about the state of the Scruggs' home, which described it as cluttered and foul-smelling, with large piles of debris and laundry scattered throughout).

43 See Suicide of a 12-Year-Old, supra note 2 (stating that in some places in Daniel's room the mess was so high that it was at least as high, or even higher than Daniel's bed); Scruggs, 905 A.2d at 28 (detailing the testimony of the state's witness in the case against Ms. Scruggs, which described Daniel's room as so cluttered that his floor was not visible underneath the large piles of laundry).

44 Suicide of a 12-Year-Old, supra note 2.

45 See CHILD ADVOCATE, supra note 29, at ii (detailing the findings of the Child Advocate and the Fatality Review Panel, which revealed that Daniel's mother, the school, the state's child protection agency, and the Superior Court for Juvenile Matters all failed to evaluate Daniel completely, neglected
involvement of the school nurse, no therapist, and no intervention targeting [Daniel’s] hygiene."46 Not only were Washington Middle School’s administration and teachers aware of Daniel’s problems, but the Department of Children and Families (DFC) and the juvenile court were also aware of and involved in his situation.47 The school “took mandated action” and contacted the DFC and juvenile court because of Daniel’s status as a truant.48 The DFC’s case on Daniel was closed six days before he took his own life.49 Not surprisingly, the investigation conducted by the state Office of the Child Advocate and the Child Fatality Review Panel concluded that Daniel had been “let down by every safeguard that was supposed to protect him.”50

Daniel’s mother claims she too was ignorant as to the extreme level of Daniel’s bullying, but admitted that she knew he did not like to attend school and that his refusal to bathe was an attempt to stay home.51 Judith recalled, “He didn’t wanna bathe. He tried to use this as an excuse not to go to school... He was trying to save himself. And I – and I didn’t recognize it. I just didn’t know.”52 Judith blamed the school’s inaction for Daniel’s death.53

to find that he was showing signs of emotional disturbance, and was at risk of committing suicide); see also Suicide of a 12-Year-Old, supra note 2 (describing how Daniel was sent to school by his mother smelling dirty with mismatched clothes, and how the school failed to intervene on Daniel’s behalf when he was being bullied).

46 Suicide of a 12-Year-Old, supra note 2.

47 See Suicide of a 12-Year-Old, supra note 2 (stating that once Daniel’s mother could no longer get him to go to school on any type of regular basis, the case was turned over to the Department of Children and Families); see also Avi Salzman, Court Ruling Clears Mother in Son’s Suicide, N.Y. TIMES, Aug. 29, 2006, at B1 (detailing a state report that found numerous agencies were involved with Daniel, including the Department of Children and Families, but none improved his situation).

48 See CONN. GEN. STAT. § 10-198a(a) (2008) (defining truant as “a child enrolled in a grade from kindergarten to eight, inclusive, in a public or private school who has four unexcused absences from school in any one month or ten unexcused absences from school in any school year”); see also CHILD ADVOCATE, supra note 29, at 1 (describing how the DFC ignored warning signs, including the mess in Daniel’s home and the fact that he did not want to go to school, and how the DFC, Daniel’s school, and the court for juvenile matters all failed to evaluate Daniel emotionally).

49 See Marc Santora, Mother’s Liability in Son’s Suicide is Debated, Then Jury Gets the Case, N.Y. TIMES, Oct. 2, 2003 at B5 (detailing that the state investigation into Daniel’s death was closed six days before Daniel died); CHILD ADVOCATE, supra note 29, at 15 (stating that DFC closed the investigation into Daniel on December 27, 2001).

50 See Santora, supra note 49 (stating that those whose job it was to protect Daniel were not able to do so); CHILD ADVOCATE, supra note 29, at 23–24 (discussing the shortcomings of all those involved in investigating Daniel’s situation).

51 See Marc Santora, Woman Guilty in Son’s Suicide Says School Bullying Is to Blame, NY TIMES, Oct. 29, 2003, http://query.nytimes.com/gst/fullpage.html?res=9E03EDEC1630F93AA15753C1A9699C8643 (noting that Scruggs knew her son was having problems in school, but was unaware that he might be in serious danger); Suicide of a 12-Year-Old, supra note 2 (explaining that Scruggs knew her son refused to bathe so he could stay home from school).

52 Suicide of a 12-Year-Old, supra note 2.

53 See id. (stating that Scruggs blamed the school for not protecting her son); Santora, supra note
Four months after Daniel’s suicide, Judith was arrested and charged with three counts of risk of injury to a minor and one count of cruelty to persons. The detective on the case said, “Scruggs was charged for conditions leading up to Daniel’s death.” The jury convicted Judith on one count of risk of injury to a minor for providing an unhealthy home environment. The jury found that it was Judith’s responsibility as a mother to provide an adequate home environment for her child. This was the first case in Connecticut where prosecutors criminally charged a parent in connection with the suicide of his or her own child. However, in August of 2006, the Connecticut Supreme Court overturned the conviction of Judith Scruggs because the prosecutors could not establish “objective standards for determining the point at which housekeeping becomes so poor that an ordinary person should know that it poses an unacceptable risk to the mental health of a child.” On appeal, the Supreme Court of Connecticut overturned the conviction against Scruggs on the ground that Connecticut’s risk of injury statute was unconstitutionally vague and thus could not be applied to Judith Scruggs. The court did not evaluate Scruggs’ duty or responsibility, owed to Daniel, as his parent.

51 (noting that Scruggs held the school accountable for her son’s death due to the constant bullying he was subjected to at school).
54 See Suicide of a 12-Year-Old, supra note 2 (stating that Scruggs was charged with three counts of risk of injury to a minor and one count of cruelty to persons); Alain Griffin, Classmate Describes Bullying, HARTFORD COURANT, Sept. 27, 2003, at A1 (counting the three charges of risk of injury and the one charge of cruelty to persons against Scruggs).
55 Suicide of a 12-Year-Old, supra note 2.
56 See Scruggs, 2004 WL 1245557 at *5 (discussing that the jury found sufficient evidence that the Scruggs’ home was unhealthy and unsanitary); Gillies, supra note 31, at 131 (noting that Scruggs was convicted of one count of risk of injury to a minor for providing an unhealthy living environment); Suicide of a 12-Year-Old, supra note 2 (stating that after deliberating for three days, the jury found Scruggs guilty on one count of risk of injury to a minor).
57 See Marc Santora, After Son’s Suicide, Mother Is Convicted Over Unsafe Home, NY TIMES, Oct. 7, 2003, http://query.nytimes.com/gst/fullpage.html?sec=health&res=980DEED6103CF934A35753C1A9659C8B63&scp=1&sq=santora%20unsafe%20home&st=cse (stating that Scruggs had a parental duty that superseded all other causes of Daniel’s suicide); Michele Jacklin, Failure on Many Levels; Child Protection Crisis, HARTFORD COURANT, Oct. 12, 2003, at C3 (noting that Scruggs was found to have created an unsafe environment for her son).
58 See Santora, supra note 57 (noting that the Scruggs case was the first Connecticut case in which prosecutors criminally charged a parent in connection with the suicide of his or her own child); Conviction in Son’s Suicide Overturned, USA TODAY, Aug. 29, 2006, http://www.usatoday.com/news/nation/2006-08-29-son-suicide-x.htm (stating that this was the first time a parent had been convicted over a child’s suicide).
60 See Scruggs, 905 A.2d at 26 (holding that the Connecticut statute used by the trial court to convict Scruggs was unconstitutionally vague); Conviction in Son’s Suicide Overturned, supra note 58 (noting that the statute used by the court was too vague).
61 See Scruggs, 905 A.2d at 26 (highlighting that the sole issue on appeal to the Supreme Court of
II. EMOTIONAL SIDE OF SUICIDE

A. Children as Emotional Beings

Children, like adults, are emotional-beings. Children deserve unconditional love, necessarily including protection and support from parents who want them. "Healthy childhood development is crucial for a child to become a well-adapted and productive member of society." Parents are the most influential individuals in a child’s life, upbringing, and development. Furthermore, “lack of parental supervision, parental rejection and parent-child involvement” can have devastating effects on a child’s emotional development. Like so many other teenagers in the United States, Daniel did not get the affection, support, or involvement he needed from his mother. It was not possible for Judith to devote the time, energy, and love he needed when she was working two jobs and rarely home.

There are many types of neglect. Neglect is not solely a parent’s failure...
to provide a child with a safe environment, food, and clothes.\textsuperscript{69} Parents can also neglect their child emotionally, and emotional neglect is as damaging to a child’s development and well-being as other more tangible forms of neglect.\textsuperscript{70} On the most basic level, “emotional neglect is the failure to provide affection or love or other kinds of emotional support.”\textsuperscript{71} Within the legal realm, emotional neglect is, “the deprivation, by a parent or person in \textit{loco parentis}, of love, affection, or feelings, with a resulting adverse effect on the ability of the child to develop satisfactory relationships with such parent or person in \textit{loco parentis}, or with other persons generally.”\textsuperscript{72} There are a number of ways children can be emotionally neglected by their parents, including: \textsuperscript{73} “inadequate attention to a child’s emotional needs, need for affection, lack of emotional support . . . [and] refusing or delaying needed psychological treatment for a child’s behavior or emotional issue.”\textsuperscript{74} The omission or the withholding of words can become emotional neglect.\textsuperscript{75}

The effects of emotional neglect are severe.\textsuperscript{76} Inevitably, emotionally neglected children will harbor feelings of rejection.\textsuperscript{77} This rejection creates

\textsuperscript{69} See Koester, supra note 68 (noting that when people hear the word “neglect,” they think of parents not providing their children with food, clothes, and shelter); see also Merck, supra note 68 (explaining that neglect is more than just a failure to meet a child’s basic physical needs).

\textsuperscript{70} See Koester, supra note 68 (noting that emotional neglect is as dangerous as physical neglect because the harm caused by emotional neglect to a child’s well-being is just as severe as the damage to a child’s health and safety done by physical neglect); see also Merck, supra note 68 (categorizing emotional neglect as one of four types of child maltreatment generally recognized).

\textsuperscript{71} Merck, supra note 68.

\textsuperscript{72} Tinsley, supra note 68, at 17. Different judges and commentators on the issue of emotional neglect have proposed new definitions of emotional neglect. Id. One commentator has defined emotional neglect as the “deprivation suffered by children when their parents do not provide opportunities for normal experiences producing feelings of being loved, wanted, secure and worthy, which results in the ability to form healthy object relationships. Id. Another commentator described an emotionally neglected child as a child “with symptoms of abnormal personality structure and as one who is unable to form satisfactory relationships with others.” Id.

\textsuperscript{73} See Koester, supra note 68 (stating the different ways a child can be emotionally neglected); see also Merck, supra note 68, at 2 (discussing the ways a child can be emotionally neglected).

\textsuperscript{74} Koester, supra note 68.

\textsuperscript{75} See Merck, supra note 68 (highlighting that emotional neglect becomes relevant when parent ignore or reject their child or isolate him or her from interacting with other children or adults); see also Tinsley, supra note 68 at 17 (outlining that emotional neglect can be classified as either total or partial, active or passive and an example of partial neglect is where parental love is present, but a parent is unable to accept his or her child’s defect).

\textsuperscript{76} See Tinsley, supra note 68, at 17 (stating that emotionally neglected children can display a number of different symptoms including habit disorders, conduct disorders, neurotic trains, and psychoneurotic reactions); see also Child Welfare Information Gateway, Recognizing Child Abuse and Neglect: Signs and Symptoms, http://www.childwelfare.gov/pub/recsheets/signs.cfm (last visited Mar. 8, 2009) (discussing the signs of an emotionally abused child).

\textsuperscript{77} See Tinsley, supra note 68, at 18 (noting that a child’s feeling of rejection is an “invariable effect of emotional neglect”); Child Welfare Information Gateway, supra note 76 (listing the lack of attachment to the parent by the child and overt rejection of the child by the parents themselves as signs
a “vicious cycle in the parent-child relationship.” Due to the rejection felt by the child, the child develops feelings of insecurity, and then tests the parents in some way, thereby amplifying the parents’ negative feelings toward the child. When children do not feel loved by their parents they develop low self-esteem; this in turn is likely to manifest itself in unhealthy coping mechanisms such as self-harm. Additionally, children who are emotionally neglected often perform poorly in the academic context and have trouble interacting with their classmates.

Interestingly, emotionally neglectful parents can be found in all socioeconomic backgrounds. In middle and upper socioeconomic classes, the phenomenon known as the “Beverly Hills Syndrome” has emerged. “The children of such parents, while adequately cared for in terms of their physical [or financial] needs, suffer emotional deprivation. Thus, a child from a well-to-do family may be unwanted by his or her parents and cared for only by hired help.” On the opposite side of the spectrum are uneducated parents from a lower socioeconomic status who can only work unskilled jobs. These disadvantages translate into frustration, which are

78 Tinsley, supra note 68, at 19.
79 See Tinsley, supra note 68, at 18–19 (mentioning how a child’s insecurity causes them to test their parents by lashing out); Gina Kemp, et al., Attachment Disorders: Insecure Attachment and Reactive Attachment Disorder (RAD), http://www.helpguide.org/mental/parenting_bonding_reactive_attachment_disorder.htm (last visited Mar. 8, 2009) (discussing the causes of attachment disorders).
80 See Koester, supra note 68 (noting that other types of coping mechanisms include eating disorders, substance abuse, and delinquency); see also Bruce D. Perry, Bonding and Attachment in Maltreated Children: Consequences of Emotional Neglect in Children, http://www.childtrauma.org/CTAMATERIALS/ATTACH_ca.asp (last visited Mar. 8, 2009) (discussing how children deal with maltreatment, including physical and emotional responses).
81 See Koester, supra note 68 (stating that emotionally neglected children perform poorly in school, do not work well with others, and release internal anger through verbal and physical attacks); see also Tinsley, supra note 68, at §9 (commenting that although some emotionally deprived children eventually make adequate adjustments later in life, the majority of neglected children become delinquents).
82 See Tinsley, supra note 68, at § 3 (noting that while neglect is more common in families of lower socioeconomic standing, it is not confined to those barriers); Cynthia R. Mabry, Second Chances: Insuring that Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty, 102 W. Va. L. Rev. 607, 616 (2000) (“[N]eglect stretches along the entire spectrum of socioeconomic groups ... ”).
83 See Tinsley, supra note 68, at § 3 (explaining that the phenomenon known as “Beverly Hills Syndrome” refers to emotionally neglectful parents in middle or upper economic spheres); Elizabeth A. Wilson, Suing for Lost Childhood: Child Sexual Abuse, the Delayed Discovery Rule, and the Problem of Finding Justice for Adult-Survivors of Child Abuse, 12 UCLA WOMEN’S L.J. 145, 213 (2003) (claiming that although psychological neglect typically accompanies physical neglect, psychological neglect likely occurs without physical neglect in middle class families).
84 Tinsley, supra note 68, at § 3.
85 See id. (describing neglecting parents as economically disadvantaged, poorly educated, and aided by public assistance); Kathryn Kuehnle, Martha Coulter & Gregory Firestone, Child Protection Evaluations: The Forensic Stepchild, 38 FAM. & CONCILIATIONCTS. REV. 368, 374 (2000) (stating that children from families earning less than $15,000 annually are twenty-two times more likely to be
then reflected in their inability to be effective parents. Regardless of social and economic status, the majority of parents who neglect to nurture the emotional well-being of their children were victims of emotional deprivation themselves and translate their own childhood rejection into poor parenting techniques.

Unfortunately, there is a great deal of reluctance to recognize emotional deprivation within the legal sphere. For the most part, the legal notion of neglect has centered on the physical evidence of neglect rather than evidence of emotional or psychological neglect. "State legislatures, courts, and societies have historically tended to view psychological, intellectual, social, moral, and emotional abuse as nebulus and insignificant." The main reason for this reluctance is because measuring emotional neglect is difficult in that it is intangible. By nature, emotional neglect is elusive. In contrast, the symptoms of physical abuse or neglect are widely identifiable or obvious, and communities are more aware of the symptoms. Emotional neglect is difficult to establish and hard to protect reported as maltreated than families earning over $30,000 annually).

See Tinsley, supra note 68, at § 3 (noting that emotionally neglectful parents often blame others for their own failures, feel worthless and inadequate, and fail in their roles as parents); see also DIANA J. ENGLISH, THE EXTENT AND CONSEQUENCES OF CHILD MALTREATMENT 47 (1998), available at http://www.futureofchildren.org/usr_doc/vol8nolART3.pdf (suggesting that the stress and frustration which accompany the inability to hold a job and provide necessary resources may lead to parental neglect).

See Tinsley, supra note 68, at § 3 (suggesting that neglectful parents experienced deprivation and rejection in their own childhood and carried feelings of denial into parental roles); cf. Thomas N. Bulleit, Jr., The Battering Parent Syndrome: Inexpert Testimony as Character Evidence, 17 U. Mich. J.L. REFORM 653, 659 (1984) (stating that almost all abusive parents in "battering parent syndrome" study were either abused or neglected as children themselves).


See Tinsley, supra note 68, at §10 (explaining that although the majority of state neglect statutes include emotional neglect, judges, legislators and agency employees usually focus only on physical neglect); Marsha Garrison, Article, Child Welfare Decisionmaking: In Search of the Least Drastic Alternative, 75 GEO. L.J. 1745, 1775–76 (1987) (commenting that while every jurisdictional state allows state intervention where there is serious injury or grave risk of death or serious physical harm to a child at the hands of a guardian, many commentators suggest that lesser parental maltreatment should not justify state intervention).


See Tinsley, supra note 68, § 10 (explaining why there is a reluctance to recognize emotional and psychological neglect in the legal arena); J. Robert Shull, Emotional and Psychological Child Abuse: Notes on Discourse, History and Change, 51 STAN. L. REV. 1665, 1693 (1999) (emphasizing that because emotional neglect is intangible, it is difficult to recognize).

See Tinsley, supra note 68, § 10 (noting the difficulty in pinpointing emotional neglect); see Shull, supra note 91 at 1693 (confirming that emotional neglect is elusive).

See Tinsley, supra note 68, § 10 (distinguishing the identifiable nature of physical neglect from the less apparent emotional neglect); G. Steven Neeley, The Psychological and Emotional Abuse of
children from. Furthermore, due to the intangibility of emotional neglect, by the time judges and agencies have the ability to quantify and diagnose a child with emotional neglect, that child has typically already reached an advanced age.

For example, in the case of In Re Shane T., a 14-year-old boy was persistently taunted by his father with regard to the boy's sexual identity. More specifically, the boy’s father accused him of being homosexual. The court held that the boy was emotionally neglected and abused by both parents, but when convicting the father, the court still looked to the physical injury and pain the boy experienced due to his father’s cruel words. The boy testified that he experienced stomach pain, explaining that it felt “as if [his father] plunged a knife into [his] stomach.” The court used the boy’s physical condition to quantify the emotional abuse he was experiencing at the hands of his father, instead of independently evaluating the psychological damage done to him.

B. Linking Parental Relations and Suicidal Behavior in Adolescents

While legislators and courts have declined to hold parents liable for emotional neglect and adolescent suicides, scientific research and empirical evidence demonstrate a direct connection between the parent-child relationship and suicide. “It is possible that the parental-adolescent

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94 See Tinsley, supra note 68, § 10 (identifying obstacles to the combating of emotional abuse or neglect); Neeley, supra note 93, at 716 (reaffirming the difficulty in diagnosing and treating children for emotional neglect).

95 See Tinsley, supra note 68, § 10. “[T]he behavioral manifestations of emotional neglect often do not develop until a child reaches adolescence or adulthood, [thus] reported cases of emotional neglect are more prevalent in older children, whereas cases of physical abuse or neglect are more prevalent with very young children. [Therefore] the difficulty of diagnosing emotional deprivation is one reason for the reluctance to base a finding of neglect on emotional deprivation.” Id. See also Judith G. McMullen, The Inherent Limitations of After-the-Fact Statutes Dealing with the Emotional and Sexual Maltreatment of Children, 41 Drake L. Rev. 483, 500. It is often difficult to diagnose a child’s emotional abuse until the victim has already grown up. Id.

96 453 N.Y.S.2d 590, 591, 592 (Fam. Ct. 1982). The petitioner was the Commissioner of Social Services, who sought adjudication that the minor son and his two sisters were abused and neglected by both of their natural parents. Id. at 591.

97 In re Shane T., 453 N.Y.S.2d at 592 (detailing the father’s terminology in questioning his son’s sexuality).

98 Id. at 594. The mother was also found guilty of emotional neglect for her failure to ameliorate the situation between the boy and his father after the boy pleaded with his mother for her help. Id. at 592. The court declared her attempts futile. Id. at 594.

99 See Id. at 593–94 (giving case-specific evidence of the physical impact that emotional abuse can have on a child).

100 See Id. at 592–93.

101 See Sarah A. Fotti et al., The Associations Between Peer and Parental Relationships and
relationship is related to the adolescent's emotional distress and that emotional distress, in turn, is predictive of later suicidality.\textsuperscript{102}

Poor parental relationships have been associated with suicidal behavior in adolescents.\textsuperscript{103} Decreased parental nurturance and increased parental rejection were correlated with increased suicidal ideation and suicide attempts by early adolescents.\textsuperscript{104} Clinical reports have demonstrated that suicidal teenage patients displayed less warmth within their families than adolescents in comparative families.\textsuperscript{105} The concept of warm interaction between parent and child exists where the parent uses "positive communication, offers support and affection, demonstrates a close relationship high in relationship quality, and demonstrates interest and provides quality time in the adolescent's life."\textsuperscript{106} The factors that are encompassed in the notion of "warmth" are vital interactions, and the onus falls on the parents to fulfill them.\textsuperscript{107} Parental warmth acts as a strong shield for adolescents in protecting them from attempting suicide or developing suicidal ideation.\textsuperscript{108} More specifically, the behavior and

\textit{Suicidal Behaviors in Early Adolescents, 51 CAN. J. PSYCHIATRY 698, 699 (2006).} Some investigations have revealed a positive association between adolescent suicidal behaviors and family relationship difficulties in teenagers aged 14 to 18. \textit{Id.} Additionally, other evidence has demonstrated that "family connectedness and cohesiveness" protected adolescents from suicidal behavior. \textit{Id.} See also Connor & Reuter, \textit{supra} note 8, at 144. Studies of parent-child relationships have identified that a lack of warmth in relationships as a risk factor for poor child well-being. \textit{Id.}\textsuperscript{102} See Connor & Reuter, \textit{supra} note 8, at 144 (commenting that few studies have actually explored the possibility of a link between family factors and suicidality); see also Fotti et al., \textit{supra} note 101, at 699 (noting that there had not been a previous study of early adolescents analyzing the relationship between peer and parental relations and suicidal tendencies).

\textsuperscript{103} See Fotti et al., \textit{supra} note 101, at 701. Interestingly, after surveying 1,041 early adolescent boys, after the factors of depression and parental relationships were taken into account, poor peer relationships were not negatively associated with suicidal ideation. \textit{Id.} See also Latha Nrugham, Bo Larsson & Anne Mari Sund, \textit{Predictors of Suicidal Acts Across Adolescence: Influences of Familiar, Peer and Individual Factors, 109 J. AFFECTIVE DISORDERS 35, 42 (2007).} Peer relationships only become associated with suicidal ideation for older adolescents, when their parental bonds begin to loosen. \textit{Id.}\textsuperscript{104} See Fotti et al., \textit{supra} note 101, at 700 (noting that regardless of findings that negative parental interactions increased suicide ideation and attempts, depression played a much larger role than parental relationships in suicidal behavior); see also Nrugham, \textit{supra} note 103, at 36 (discussing how depression is an important factor in adolescent suicide).

\textsuperscript{105} See Connor & Reuter, \textit{supra} note 8, at 144 (explaining that two clinical studies done in 1996 and 2000 demonstrated that there was a direct relationship between increased family warmth and decreased risk of suicidal tendencies); see also Fotti et al., \textit{supra} note 101, at 701 (noting that poor parental relationships were positively associated with suicidal behaviors in both girls and boys).

\textsuperscript{106} See Connor & Reuter, \textit{supra} note 8, at 144. This study took a sample of 451 families from rural Iowa to examine a process model of predicting adolescent suicidality. \textit{Id.} at 143. This longitudinal study included observational and self-reported data and models were tested with structural equation modeling. \textit{Id.}\textsuperscript{107} See Connor & Reuter, \textit{supra} note 8, at 148 (stating that parental warmth can serve in preventing adolescents from developing suicidal thoughts); see also Nrugham, \textit{supra} note 103, at 42 (discussing how conflict between family members and low family functioning were a predictor of suicide in late adolescence).

\textsuperscript{108} See Connor & Reuter, \textit{supra} note 8, at 148. "To assess the parental warmth model, we created a
interactions between mothers and their children have been proven to have a stronger direct effect on adolescent suicidality than those between fathers and children. Parental warmth within a parent-child relationship has a strong positive impact in protecting against child psychopathology, including emotional distress and suicidality. In addition to the lack or absence of warm parent-child relationships, negative or hostile parenting characteristics are also related to teenaged suicidality. The notion of suicidality is related to “hostile, angry, neglectful, and rejecting parental behaviors directed toward the child.

It is important to improve the parent-child relationship as a means to prevent “health risk behaviors in youths.” Family connectedness is significant and inversely related to emotional distress and suicidality.

latent variable from the Relationship Quality, Quality Time, Warmth, and Communication scales. These indicators together provide at portrait of warm and supportive interactions between parent and adolescent.”

See Connor & Reuter, supra note 8, at 148-49 (emphasizing that the relationship between maternal warmth and adolescent suicidality was statistically significant); see also Diann M. Ackard, et al., Parent-Child Connectedness and Behavioral and Emotional Health Among Adolescents, 30 AM. J. PREVENTIVE MED. 59, 63 (2006) (stating that the extent to which an adolescent perceives maternal caring is associated with his behavioral and emotional health).

See Connor & Reuter, supra note 8, at 151 (specifying that on the warmth scales, warmth and support take into account verbal and non-verbal communication, along with supportiveness and content of communication); see also Michal Mann, et al., Self-Esteem in a Broad-Spectrum Approach for Mental Health Promotion, 19 HEALTH EDUC. RES. 357, 359-60 (2004), available at http://her.oxfordjournals.org/cgi/reprint/19/4/357 (indicating that negative self-esteem, which can result from a lack of unconditional parental support and attachment during childhood and adolescence, may cause psychiatric vulnerability, social problems and risk behaviors).

See Connor & Reuter, supra note 8, at 144 (outlining that parent-child conflict, rejection, hostility, and lack of rewards are linked to depression and adolescent suicidality); see also NICOLE LEZIN, LORI A. ROLLERI, STEVE BEAN & JULIE TAYLOR, ETR ASSOCIATES, PARENT-CHILD CONNECTEDNESS: IMPLICATIONS FOR RESEARCH, INTERVENTIONS, AND POSITIVE IMPACTS ON ADOLESCENT HEALTH 46 (2004), http://www.etr.org/recapp/research/litreview.pdf (noting that children trapped in abusive families are “doubly or even triply jeopardized” because in addition to being possible victims of violence themselves, they may also develop depression, emotional distress, irritability or anxiety).

See Ackard et al., supra note 109, at 59 (claiming that there is a relationship between health risk behaviors among adolescents and certain influential environments, such as the family); see also ELY ROBINSON, AUSTRALIAN FAMILY RELATIONSHIPS CLEARINGHOUSE BRIEFING, YOUNG PEOPLE AND THEIR PARENTS: SUPPORTING FAMILIES THROUGH CHANGES THAT OCCUR IN ADOLESCENCE 3 (2006), http://www.aifs.gov.au/asrc/pubs/briefing/b1pdf/b1.pdf (indicating that a sense of belonging and connectedness to family is a protective factor for a number of risk behaviors, including suicidality, drug abuse and violence).

See Ackard et al., supra note 109, at 59 (noting further that family connectedness is also inversely associated with an earlier age of sexual intercourse and drug and alcohol use); see also M.L. O’CONNOR, FAMILY PLANNING PERSPECTIVES, ADOLESCENTS WITH CLOSE FAMILY RELATIONSHIPS HAVE REDUCED CHANCES OF ENGAGING IN RISKY BEHAVIOR (1998), http://findarticles.com/p/articles/mi_qa3634/is_199803/ai_n8789931 (finding that adolescents who are connected to their families are less
For adolescents, feeling connected to their families is important.\textsuperscript{115} When surveyed, many teens valued their parents' opinions over their friends' opinions—especially with regard to making serious decisions.\textsuperscript{116} "Valuing parents' opinions appears to be a protective factor against unhealthy behavioral and emotional health indicators among both boys and girls."\textsuperscript{117} Furthermore, increased communication by either parent, when perceived by the teenager, was consistently associated with adolescent well-being.\textsuperscript{118} This conclusion highlights the extreme importance of a meaningful parent-child relationship in promoting mental health among youth.\textsuperscript{119}

C. Parents Need to Be Held Liable for Child Suicide When They Are Emotionally Neglectful

As noted, Judith Scruggs was a single mom who worked two jobs to make ends meet.\textsuperscript{120} If Judith was too busy or preoccupied to take out the garbage when it began to reek of rotting food, it doesn't seem possible that she was emotionally available for her son, Daniel. While the media dubbed it "The Messy House Case," Judith's failure to address Daniel's

likely than those who are not to have sex at an early age, use cigarettes, alcohol and marijuana, and be emotionally upset or suicidal); ROBINSON, supra note 113, at 3 ("Caring and connectedness surpass a range of demographic characteristics, such as single versus two parent families, as protective factors against risky behaviors.").\textsuperscript{115}

\textsuperscript{115} See Ackard et al., supra note 109, at 59 (describing family connectedness as an "important anchor" for youths); see also O'Connor, supra note 114 (suggesting that family closeness is a more important protective factor against risky behavior than any other family-related variable).

\textsuperscript{116} See Ackard et al., supra note 109, at 63 (noting that a large number of adolescents often perceive their parents as having low parental caring, and therefore have difficulty discussing problems in their lives with them); see also Donna G. Albrecht, Parents are the Best Mentors for Adolescents, May 2001, http://www.albrechts.com/donna/articles/parents.pdf (explaining that studies prove that while the influence of parents remains steady throughout the teen years, the influence of peers peaks at adolescence and then declines). \textit{But see} ROBINSON, supra note 113, at 3 (indicating that reliance on parents decreases throughout adolescence and around that time, attachment begins to extend from parents to peers).

\textsuperscript{117} Ackard et al., supra note 109, at 63.

\textsuperscript{118} See Ackard et al., supra note 109, at 63 (noting that increased perceived communication and caring by either parent were consistently associated with adolescent well-being). \textit{See generally} Marla E. Eisenberg, et al., \textit{Correlations Between Family Meals and Psychosocial Well-being Among Adolescents}, 158 ARCH PEDIATRICS ADOLESCENT MED. 792 (2004) (analyzing the results of a study which suggested that eating family meals enhances the psychosocial health of adolescents).

\textsuperscript{119} See Ackard et al., supra note 109, at 63 (emphasizing the importance of the parent-child relationship in promoting overall health among youth); see also Eisenberg, supra note 118, at 792 (noting that family connection has been consistently linked to a reduced risk of emotional distress among youth).

\textsuperscript{120} See Suicide of a 12-Year-Old, supra note 2 (describing how Judith Scruggs stopped home between her two jobs); CHIL ADVOCATE, supra note 29, at 2 (discussing how Daniel's father reportedly left the family when Daniel was three months old).
psychological issues went beyond living in a dirty home;\textsuperscript{121} Judith Scruggs represented much more than just a bad housekeeper. Judith Scruggs represented a parent who worked long hours and was rarely home, a parent who was passive and emotionally unavailable to give constant love to her child.\textsuperscript{122} The “Judith Scruggs” parents need to be held accountable for failing to recognize the suicidality of their adolescents as a means to stop the cycle of bad parenting.

Daniel “was a child who spent a great deal of time home alone without adult supervision.”\textsuperscript{123} The fact that it took Judith almost a day to realize her son was hanging dead in his own closet demonstrates the limited amount of time she spent at home and in which she was available for Daniel.\textsuperscript{124} In its final report on Daniel’s death, the Office of Child Advocacy and Child Fatality Review Panel concluded that Daniel exhibited severe behavioral and emotional problems “that should have alerted people around him to the fact that he was at risk, if not of suicide, at least for depression.”\textsuperscript{125} Signs of Daniel’s emotional problems were evidenced in numerous ways: he refused to shower, he would not attend school, he stayed in bed all day, he had no friends, he was irritable and argumentative with his peers, and he had a poor academic performance.\textsuperscript{126}

Certain adolescent behaviors are warning signs of emotional problems. When parents do not address the abnormal actions of their child, they fail to fulfill their parental duties.\textsuperscript{127} Perhaps if Judith Scruggs fully acknowledged the extent to which her son was suffering psychologically, Daniel would still be alive today.\textsuperscript{128} The scientific evidence collected by

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\textsuperscript{121} See CHILD ADVOCATE, supra note 29, at 36 (describing the unsanitary conditions of Daniel’s home and concluding that it affected him emotionally); Suicide of a 12-Year-Old, supra note 2 (quoting a Detective’s description of the appalling and unsanitary conditions inside the Scruggs’ house).

\textsuperscript{122} See, e.g., CHILD ADVOCATE, supra note 29, at ii (noting Scruggs’ failure to recognize the signs of emotional disturbance and Daniel’s risk for suicide); Suicide of a 12-Year-Old, supra note 2 (describing Scruggs’ passivity in getting her child psychological help).

\textsuperscript{123} CHILD ADVOCATE, supra note 29, at 17.

\textsuperscript{124} See Suicide of a 12-Year-Old, supra note 2 (explaining how it took Scruggs almost an entire day to discover her son’s body hanging in the closet); CHILD ADVOCATE, supra note 29, at 15 (discussing the sequence events between the last time Daniel was seen alive and the discovery of his body).

\textsuperscript{125} CHILD ADVOCATE, supra note 29, at 21.

\textsuperscript{126} See CHILD ADVOCATE, supra note 29, at 22 (noting the signs of Daniel’s suicidality); Suicide of a 12-Year-Old, supra note 2 (describing the evidence of Daniel’s suicidal risk).

\textsuperscript{127} See CHILD ADVOCATE, supra note 29, at 19 (discussing the extrafamilial protections in place to ensure that parents fulfill their duty to care for their children); see also Connor & Reuter, supra note 8, at 153 (concluding that parental guidance is vital in the development of an adolescent).

\textsuperscript{128} See CHILD ADVOCATE, supra note 29, at 23. “Had she enlisted the assistance of the RRG nurse and licensed clinical social worker, they might have recognized the extent of J. Daniel’s emotional disturbance and mental health needs.” Id. See also Fotti et al., supra note 101, at 701. Although depression was found to be the most positively associated factor with teen suicide in this study, poor
adolescents has conclusively shown that the family environment and family support are, after depression, the most important factors in determining the suicidality of an adolescent.\textsuperscript{129}

Since parents play such a strong role in determining the suicidality of their adolescent children, it is reasonable to hold them responsible for helping when their children are in need.\textsuperscript{130} Parents need to be alert, and cannot neglect their child's behavior when he or she portrays symptoms of depression or poses a risk to him or herself.\textsuperscript{131} At the very least, parents should be made vulnerable to civil liability, so that neglectful parents might have some incentive to change their ways.\textsuperscript{132} Parental liability is not intended to punish those parents whose child committed suicide despite the parents having done everything in their power to help the child. Parental liability is intended to alert parents, like Judith Scruggs, who are neglectful towards their children and fail to notice behaviors that might be indicative of suicidal tendencies.

III. SCHOOL LIABILITY FOR STUDENT SUICIDE PAVES THE WAY FOR PARENTAL LIABILITY

The second reason to hold parents liable for emotional neglect and adolescent suicide is that schools, as the child's temporary custodian can be held liable for failing to prevent a student's suicide, so parents should be held to the same standard of responsibility. Traditionally, there are two grounds on which parents have brought suits against schools and school personnel for their child's suicide,\textsuperscript{133} traditional tort negligence liability parental relationships were also positively associated.

\textsuperscript{129} See Connor & Reuter, supra note 8, at 151 (finding that while positive parental behavior can help teens at risk for suicide, outright hostility by parents did not predict teen emotional distress or suicidality); see also Fotti et al., supra note 101, at 700 (confirming that adolescent depression is the most significant factor in predicting adolescent suicidality, as noted in previous studies).

\textsuperscript{130} See Connor & Reuter, supra note 8, at 151. Parental warmth has a positive association with preventing adolescent emotional distress and suicidality. See also Fotti et al., supra note 101, at 700. As previously noted, poor parental relationships were positively related with suicidality.

\textsuperscript{131} See CHILD ADVOCATE, supra note 29, at ii (concluding that Daniel Scruggs' "safety system," of which his mother was the primary member, failed to acknowledge that his soiling of himself was a health risk to himself and the community, that his lack of school success was an indicator of poor mental health, and that ultimately his mother failed to provide him with adequate safety and support; see also Connor & Reuter, supra note 8, at 152 (reporting that "[l]ack and communicative behaviors displayed by mothers had a direct negative association with adolescents' reporting of suicidality.").

\textsuperscript{132} See CHILD ADVOCATE, supra note 29, at 19 (observing that "[the primary safe keepers of children are parents."); Carrie Netterville-Heieck, Ashcroft v. ACLU: Protecting Our Children from Harmful Online Material Without Infringing Upon First Amendment Rights, 4 WHITTIER J. CHILD & FAM. ADVOC. 95, 112 (2004) (noting that the responsibility for our children's safety rests largely with their parents).

\textsuperscript{133} See Richard Fossey & Perry A. Zirkel, Liability for Student Suicide in the Wake of Eisel, 10 TEX. WESLEYAN L. REV. 403, 405 (2004) (exploring both negligence and civil rights basis for holding
theories and Constitutional civil rights claims based on 42 U.S.C §1983.134
A parent’s action based on the tort theory of negligent conduct by the
school or school personnel is based on the idea that the school has a duty to
prevent the suicide of a student.135
Due to the nature of substantive due process claims, an exploration of
cases based on these claims will not provide a strong parallel to parental
liability because these cases are based upon state action and on the federal
laws that prevent the government from eluding liability in certain
instances.136 With respect to parental liability, we are not concerned with
governmental immunity, but with the deference given to parents by
legislators and courts to raise their children as they see fit.137 Therefore, for
the purpose of holding parents liable for adolescent suicide, only actions
against schools based on negligence will be evaluated and explored.138
In negligence cases against schools, parents have the difficult task of
schools and school employees liable for student suicide). See generally Sonja Larsen, Liability of
Schools or School Personnel in Connection with Suicide of Students, 17 A.L.R. 5TH 179 (2007)
discussing the ways in which schools can be held liable for student suicide).

Larsen, supra note 133, at 1. A parent’s federal civil rights claim is based on the due process
clause of the 14th Amendment. See Fossey, supra note 133, at 427. A parent may assert one of two
theories to prove that their due process rights were violated: (1) the child had a special relationship with
the state because he was in the state’s custody; or (2) the state created the danger that ultimately caused
harm to the child. Id. Although the government is typically immune from suit by a private citizen, these
theories are exceptions to the rule. Id. at 427-28. Charitable immunity has also been used as a defense.
Larsen, supra note 133, at 5. It should be noted that “the doctrine of res judicata may bar the bringing
of a federal action based on 42 U.S.C. § 1983 against a school board in a case where the plaintiffs have
already lost a negligence suit in state court against defendant teacher and school district.” Id.

See Fossey, supra note 133, at 410 (noting that the Eisel case was the first to recognize the duty
of a school in preventing adolescent suicide); see also Larsen, supra note 133, at 1 (stating that school
counselors must use reasonable care to prevent suicide when put on notice of a student’s intent).

See KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW, 375-79 (Robert C.
Clark ed., Thomson West 2007) (1937) (listing and discussing cases based on substantive due process
and the government’s ability to escape liability); see also Fossey, supra note 133, at 404 (discussing
certain instances where the state is held liable for its actions by the government).

SULLIVAN & GUNTHER, supra note 136, at 375-79 (noting that to maintain a substantive due
process claim under the Fourteenth Amendment, a plaintiff must argue that a specific state or local law
deprives a citizen of life, liberty or property); see also Brian A. Wamble, Parental Immunity: Tennessee
Joins the National Trend Toward Modification, 25 U. MEM. L. REV. 235, 244 (1994) (discussing the
parental immunity doctrine and its necessity, namely, giving parents discretion to raise their children).

See Amy Milsom, Suicide Prevention in Schools: Court Cases and Implications for Principals,
86 NASP BULLETIN 24, 25 (2002). Bogust v. Iverson, 102 N.W.2d 228 (1960) was one of the first
benchmark cases to set a precedent for determining liability of educators in negligent suits for student
suicide. Id. In Bogust, an 18-year-old college student was receiving on-campus counseling and shortly
after the counseling ended the student killed herself. Id. The parents sued the counselor and school for
negligence for failing to notify them of their daughter’s delicate mental state. Id. However, the court
ruled that “To hold a teacher who has no training, education, or experience in medical fields is required
to recognize in a student a condition the diagnosis of which is in a specialized and technical medical
field, would require a duty beyond reason.” Id. Due to this decision, courts became hesitant to place
liability on schools for student suicide. See also John S. Gearan, When is it OK to Tattle? The Need to
citing the most common claims against a school for a student’s suicide as negligence on the school’s
behalf).
proving that there was a duty on the part of the school to attempt to prevent the suicide. Additionally, parents have to overcome the school’s defense of state immunity from liability. State legislation and youth suicide prevention have been used to establish a duty owed to the child by school or school personnel. Even more effective evidence is available when the school itself has its own suicide prevention program or policies that require schools’ teachers, administrators, and staff to supervise or protect students.

A. Cases Where Schools and School Personnel Have Been Held Liable

Perhaps the most pivotal case in this area is the Maryland case of Eisel v. Board of Education of Montgomery County, which was the first case to hold a school liable for a student’s suicide. The Maryland Supreme Court held that the Board of Education and counselors of Montgomery county school were liable for failing to notify a 13-year-old girl’s father that she had expressed a desire to commit suicide. Nicole Eisel was involved in Satanism and, one week before her suicide she told a number of her friends and peers that she intended to kill herself. Some of Nicole’s

139 See Larsen, supra note 133, at §3(a) (listing multiple cases in which liability of a public institution was not established, as the parents bringing suit were unable to prove neglect); see also Bogust v. Iverson, 102 N.W.2d 228, 230 (Wis. 1960) (explaining that the school’s student director was not liable for a student committing suicide, even though the director was giving the student counseling).

140 See Larsen, supra note 133, §2(a) (commenting that there is a split amongst jurisdictions with regard to school immunity, where some courts have repealed the doctrine of charitable immunity, other courts have limited government immunity, thus making it easier for parents to successfully bring suit against a school). See generally Juhi Kaveeshvar, Kicking the Rock and the Hard Place to the Curb: An Alternative and Integrated Approach to Suicidal Students in Higher Education, 57 EMORY L. J. 651, 687 (2008) (discussing the governmental immunity awarded to schools and school personnel).

141 See Larsen, supra note 133, § 6 (discussing a case, which, under state legislation 42 U.S.C.A. § 1983, granted the family a constitutionally protected right of their child’s companionship, and a school’s negligent interference in this by not implementing an official prevention policy, is actionable); see also Kelson v. City of Springfield, 767 F.2d 651, 655 (9th Cir. 1985) (explaining legislation which holds schools liable for failing to prevent its students from committing suicide).

142 See Larsen, supra note 133, at § 2(b) (noting that teachers are insuring themselves against liability for tort claims, thus the issue of insurance coverage may arise and even when the teacher does not have a teacher’s policy, the teacher may be protected under a homeowners’ insurance policy); see also Richard F. Daugherty, Teen Suicide: School Liability and Selected Interventions, 146 ED. LAW. REP. 599, 602 (2000) (discussing the necessity for schools and its personnel to proactively identify at-risk students and provide intervention programs).

143 Eisel v. Bd. of Educ. of Montgomery County, Md., 597 A.2d 447, 456 (Md. 1991) (discussing the responsibility of school counselors to prevent suicide by taking reasonable precautions when they have prior knowledge).

144 Id. at 449-450 (explaining the theory of the case and noting the school’s policy to notify students’ parents on any issues and therefore showing that the school should be liable for failing to notify the parents).

145 Id. at 380.
friends went to the school counselor to relay the information.\textsuperscript{146} When school counseling staff confronted Nicole, she denied making these statements.\textsuperscript{147} The counselors did not notify Nicole’s parents or the school administration of the incident or of Nicole’s ideation.\textsuperscript{148} Shortly thereafter, Nicole’s friend shot her, before shooting herself.\textsuperscript{149}

Nicole’s father brought an action against the school’s counselors, principal, and administration on a negligence theory.\textsuperscript{150} The court determined that there were six factors to be considered in determining whether Nicole’s father had a cause of action against the school.\textsuperscript{151} The most important of these factors was foreseeability.\textsuperscript{152} The court reasoned that because the counselors were notified of Nicole’s intent to end her life, her suicide was foreseeable.\textsuperscript{153} The court found that the counselors had a duty to try to prevent Nicole’s suicide.\textsuperscript{154} The court looked to the state’s policy of “preventing future harm [as] support[] in the imposition of a duty on schools to prevent student suicides.”\textsuperscript{155} Maryland’s “Suicide Prevention School Program Act” was a statewide program that required any level of school official or employee to report any ideation or attempts at suicides.\textsuperscript{156} Additionally, the court held that the school acted in loco parentis with

\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} See Eisel, 324 Md. at 380. Nicole and her friend who attended another school made a suicide pact together and the friend shot Nicole before shooting herself. Id. The murder-suicide occurred in a public park on a school holiday. Id.
\textsuperscript{150} Id. at 377.
\textsuperscript{151} Id. at 385–86 (explaining that these factors were used to evaluate whether there is a duty to attempt to prevent a student’s suicide by reasonable means); see Fossey, supra note 133, at 408 (noting that the six factors the court looked at to determine whether the plaintiff had a viable cause of action were: 1) foreseeability of harm, 2) public policy of preventing future harm, 3) closeness of the connection between the defendant’s conduct and the injury, 4) moral blame, 5) burden on the defendant, and 6) insurability).
\textsuperscript{152} See Eisel, 324 Md. at 386 (noting that absent foreseeability, the school would have no duty to prevent Nicole’s suicide); see also Fossey, supra note 133, at 408 (explaining that the court found foreseeability to be the most significant “variable in the duty calculus” (citation omitted)).
\textsuperscript{153} Eisel, 324 Md. at 386 (reasoning that Nicole’s suicide did not cease to be foreseeable when she denied her intentions to the counselors); Fossey, supra note 133, at 408 (noting that the court referred to a social service agency opinion which said that educators should be able to recognize the higher value of peer reports as opposed to an adolescent’s denial to her counselors).
\textsuperscript{154} Eisel, 324 Md. at 381 (stating that a special relationship between a suicidal person and a defendant can create “a duty to prevent a foreseeable suicide”).
\textsuperscript{155} Fossey, supra note 133, at 409 (clarifying the court’s reasoning in Eisel); Eisel, 324 Md. at 387–88 (synthesizing the current legislation on youth suicide into a uniform public policy).
\textsuperscript{156} Fossey, supra note 133, at 409. The act gave the following advice to school staff members: “Tell others — as quickly as possible, share your knowledge with parents, friends, teachers or other people who might be able to help. Don’t worry about breaking a confidence if someone reveals suicidal plans to you. You may have to betray a secret to save a life.” Id. See Eisel, 324 Md. at 389. The memorandum issued to the staff of Sligo Middle School on February 18, 1987.
A second case where parents successfully brought a negligence action against a school is *Wyke v. Polk County School Board.* In that case, a Florida court found that school officials had a duty to inform a student’s mother of his attempts to commit suicide, and that the school’s failure to do so was a sufficient basis for submitting the case to the jury. In *Wyke*, 13-year-old Shawn Wyke committed suicide at home, but had made two previous attempts to hang himself at school. While the facts in this case were disputed, there was testimony that the parents of one of Shawn’s classmates had informed the Dean of Students about Shawn’s first suicide attempt at school. Additionally, evidence supported the claim that the school’s custodian had informed the Dean of Students about Shawn’s second attempt at committing suicide. The Dean of Students did not inform Shawn’s mother about his behavior, despite having been explicitly told about the incidents. The jury returned a verdict in favor of Shawn’s mother and awarded her damages. On appeal, the Eleventh Circuit affirmed the jury’s decision, deeming it to be in accordance with Florida state tort law.

The 1995 Idaho case, *Brooks v. Logan,* is also relevant to this discussion. Jeffery Brooks, a high school student, wrote daily journal entries as part of an English assignment and in those entries, Jeffery ruminated about death and depression. Jeffery wrote such entries from September to December and the following January, Jeffery committed

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157 Eisel, 324 Md. at 384. “Further, we have recognized ‘the doctrine that the relation of a school vis-à-vis a pupil is analogous to one who stands in loco parentis, with the result that a school is under a special duty to exercise reasonable care to protect a pupil from harm.’” *Id.*

158 129 F.3d 560 (11th Cir. 1997).

159 *Id.* at 566 (dismissing a federal claim, but allowing the state court claim for negligent supervision to be heard by a jury).

160 *Id.* at 563; see Fossey, supra note 133, at 418.

161 *Wyke,* 129 F.3d at 564.

162 *Id.* at 564–65.

163 *Id.* at 567.

164 *Id.* at 566. While the jury rendered a verdict for Shawn’s mother, the jury determined that the mother along with her boyfriend’s mother, whom she lived with, were responsible for 32 percent of Shawn’s death and the school was responsible for 35 percent of the total $500,000 in damages. *Id.* Therefore, Shawn’s mother’s total reward was only $165,000. *Id.*

165 *Wyke v. Polk County Sch. Bd.*, 137 F.3d 1292, 1293 (11th Cir. 1998) (holding the lower court’s ruling complied with Florida Statute § 768.81).

166 *Wyke,* 129 F.3d at 571.


168 *Id.* at 75.
Jeffery’s teacher claimed that she did not read the journal entries until after his death. Jeffery’s parents brought a tort suit against the school district, claiming that the school district had a duty to investigate the qualifications of teachers and had a duty to take affirmative action to detect and assist students who were depressed or projected a desire to commit suicide. The court determined that there was conflict of evidence as to whether the teacher ever read Jeffery’s journal entries prior to his death and decided that it was appropriate for the jury to determine whether there was a breach of a duty on the part of the school district. This case is relevant in that the court acknowledged that the school district could be held liable for Jeffery’s death.

These cases demonstrate legal recognition of the fact that school administrators, teachers, and employees play an important role in identifying students at serious risk of hurting themselves, or committing suicide. Teachers and counselors have the daunting task of weighing “the importance of reporting information told to them in confidence against maintaining a trusting relationship with a student.” School personnel have an “ethical obligation” to report at-risk students and that obligation has increased since more schools have adopted suicide prevention programs. Therefore, it is safe to conclude that the law holds schools liable and has placed a duty on school personnel to be alert and conscious of at-risk students during the six to eight hours a day the school has custody of the student. Likewise, the law should also place a legal responsibility

\[169\] Id.
\[170\] Id.
\[171\] Id. at 75–76.
\[172\] Id. at 80. See Brooks v. Logan, 944 P.2d 709 (Idaho 1997). On appeal to the Idaho Supreme Court, the court ruled that the state’s governmental immunity statute protected the school district and teacher. Id. at 712. The court held that the resolution of the disputes presented in the case were not necessary because the school and teacher were protected by statutory immunity. Id. at 710.
\[173\] See Larsen, supra note 133, at 7; see also Eisel v. Bd. of Educ., 597 A.2d 447 (Md. 1991) (holding that school counselors had a duty to use reasonable means to prevent a student’s suicide when they are aware of the student’s suicidal intent).
\[174\] See Milsom, supra note 138, at 28 (noting specifically that historically, school counselors are in the best position to identify emotionally unstable students); but cf. McLaughlin v. Sullivan, 461 A.2d 123, 127 (N.H. 1983) (holding that a prisoner’s attorney did not have a duty to prevent the prisoner’s suicide because she did not possess the “expertise or the training necessary to judge or foresee that a client will commit suicide”).
\[175\] See Milsom, supra note 138, at 29.
\[176\] Id. at 28 (proposing a concomitant rise in violence programs and suicide programs in schools); see also SCHOOL HEALTH POLICIES AND PROGRAM STUDY 1 (2006), http://www.cdc.gov/HealthyYouth/shpps/2006/factsheets/pdf/FS_SuicidePrevention_SHPPS2006.pdf (showing a statistical rise in funding and curriculum requirements associated with suicide programs in schools).
\[177\] See Wyke v. Polk County Sch. Bd., 129 F.3d 560, 571 (11th Cir. 1997) (holding that a school is negligent if it fails to inform the parents of a child who attempts suicide at the school); but see Fowler v. Szostek, 905 S.W.2d 336, 341 (holding that a high school was not responsible for a student’s suicide
on parents to be alert and conscious of the peculiar behavior and suicidal tendencies of their own children. There should be an even higher duty of care placed on a parent who maintains custody of his or her child for the remaining 16 to 18 hours a day.

B. Cases Where Schools and School Personnel Have Not Been Held Liable

The preceding three cases are notable because courts have otherwise been hostile to tort claims brought by parents against schools. In the post-Eisel era, there are still a number of jurisdictions that neither rely on Eisel nor hold schools liable for a student’s suicide. First, in Fowler v. Szostek, a 1995 Texas case, the court ruled that the defendant school did not owe a duty to the student once she left school grounds. Brandi Nelson was a 13-year-old student accused of selling marijuana to two of her classmates. Brandi denied the accusations, but was still expelled from school. On the first evening of her suspension, Brandi took her stepfather’s gun and fatally shot herself. Brandi left a note that read: “I lied[,] I love you.” Brandi’s mother and stepfather sued the principal and where the student committed suicide at home after being expelled).

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178 See CHILD ADVOCATE, supra note 29, at 37. With regard to Daniel Scruggs, the Office of the Child Advocate concluded that it was duty of Judith to make sure she could keep her home safe for Daniel. Id. Keeping a safe home would have ensured a higher level of safety for Daniel, which Judith could not do on her own and she did not seek help or assistance with the task. Id. No one could have gone into the Scruggs’ home and cleaned it for Judith; she had to take the initiative to fulfill her duty as a parent. See also, ENCYCLOPEDIA OF SCHOOL PSYCHOLOGY 82 (Steuart Watson and Christopher Skinner eds., Birkhauser 2004).

179 See Hasenfus v. LaJeunesse 175 F.3d 68, 73. This case held that a school did not have a duty to protect its student from harm when a student committed suicide in the school locker room. The court elaborated that “[a]bsent a showing that the school affirmatively caused a suicide, the primary responsibility for safeguarding children from this danger, as from most others, is that of their parents . . . .” Id. See also Tinsley, supra note 68, at 10.

180 Fossey, supra note 133, at 406 (holding that “when conducting a tort analysis, many courts now consider suicide to be an intervening cause, negating liability on the part of negligent parties.”); see generally Wyke, 129 F.3d at 571 (finding a school responsible for failure to tell a student’s parents of that student’s suicide attempt at school); Brooks v. Logan, 905 P.2d 73 (Idaho Sup. Ct. 1995) (holding that a school is possibly liable for the suicide of its student where the student wrote about the desire for suicide in journal entry assignments); Eisel v. Bd. of Educ., 597 A.2d 447 (Md. 1991) (announcing a duty for schools to try to prevent suicides where they see indicia of suicidal behavior on campus).

181 See Fossey, supra note 133, at 411 (noting that the jurisdictions that have denied liability on the part of schools after the Eisel decision have used a variety of different analyses, “but none of the pertinent decisions have even mentioned, much less relied on Eisel”); see also Michael D. Simpson, Student Suicide: Who’s Liable?, NEA TODAY, Feb. 1999, at 25 (discussing the varied results of student suicide liability cases based on state).

182 905 S.W.2d 336, 341 (Tex. 1995). The court stated that “the defendants did not owe . . . a legal duty to Brandi, once she left the campus.” Id.

183 Id. at 338.

184 Id. at 339.

185 Id.

186 Id.
two vice-principals for negligence based on the claim that the school should have postponed any disciplinary action until a more detailed investigation took place. The court ruled that the school administrators were protected by governmental immunities and that the actions of the administrators did not constitute a statutory exception to the immunity laws. Fowler illustrates the effect of governmental statutory immunity and how courts can interpret it to exempt schools from liability in student suicide cases.

The Illinois case of Grant v. Board of Trustees of Valley View School District is another example of a school's successful use of the governmental immunity defense in a negligence action arising out of a student suicide. Jason Grant was a high school senior who told several classmates that he was going to kill himself. Jason's peers told the school's counselor what Jason told them. The counselor called Jason's mother and told her to take Jason to a hospital for drug testing, but failed to tell her about the suicide threats. On the way to the hospital, Jason jumped out of his mother's car and then jumped off a highway overpass, causing his immediate death. Jason's mother brought a negligence suit against the school board and counselor claiming that they breached a special duty owed to her son to exercise reasonable care for his safety.

The court held that the defendants did not owe a special duty to Jason and that the defendants were immune from any ordinary negligence under the in loco parentis doctrine.

187 Id. at 338.
188 Fowler, 905 S.W.2d at 341. The two exceptions spelled out in the statute were either 1) an excessive use of force in disciplining a student, or 2) negligence that resulted in bodily injury to a student. Id.
189 See Fossey, supra note 133, at 413 (discussing how governmental immunity "indirectly indicates limitations on asserted duty to prevent a student’s suicide in a context only marginally similar in facts to Eiser"); see also Fowler, 905 S.W.2d at 341 (explaining that the defendant did not owe, as a matter of law, a legal duty to Brandi once she left campus).
191 Id. at 706.
192 Id.
193 Id.
194 Id.
195 Id. at 707. In the plaintiff's complaint, she argued that the school breached its duty by failing to: inform her of her son's suicide threats, call an ambulance or medical personnel, and create or implement a suicide prevention program. Id. The plaintiff claimed that the school's failure to act constituted either ordinary negligence or willful and wanton misconduct. Id.
196 Grant v. Bd. of Trustees Valley View Sch., 676 N.E.2d 705, 707-09 (III. App. Ct. 1997). Additionally, the court said that the special duty exception to governmental immunity did not apply here because the exception only applies to injuries that occurred "while the plaintiff [Jason] was under the direct and immediate control" of the school district and counselor. Id. at 707. Finally, the court also rejected the argument that the school had a duty to implement a suicide prevention program because state law authorized, but did not require, schools to establish in-school prevention programs; thus, there
Interestingly, the court in *Grant* acknowledged that the nondisclosure of Jason's suicide threats could have constituted ordinary negligence. However, the court ruled that Jason's mother failed to provide sufficient evidence to prove that school officials acted with gross negligence – either with indifference or conscious disregard for Jason's well-being and safety. The court made a number of additional conclusions. First, the court concluded that Jason's mother failed to prove that the school officials knew their conduct created a high probability of serious physical harm to Jason. Second, the court outlined ways in which a parent could surmount the governmental immunity defense to school negligence claims. The court stated, “if [the defendant] had failed to take any action upon learning of Jason's statements, [the inaction] could constitute willful and wanton conduct.”

Finally, the dissent argued that it was plausible for a jury to find that the counselor breached the duty of care owed to Jason. Justice Breslin stated, “the counselor's failure to advise Jason's mother that he . . . contemplated suicide could have amounted to a failure to exercise ordinary care . . . . It would be reasonable for a jury to find that the counselor acted with a conscious disregard for Jason's life by failing to take aggressive steps to prevent Jason from committing suicide or failing to place [his mother] on notice . . . .” While these words were mere dictum, they project the delicate nature of school liability suits along with the stark split between jurisdictions over whether it is appropriate to rule in favor of a grieving parent.

Notwithstanding these cases, courts are more willing to acknowledge the duty of school administrators and to hold faculty responsible for mental and emotional well-being of students in the post-*Eisel* era. This is evidenced was no breach of duty by failing to establish a prevention program. *Id.*

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197 *Id.* at 709.
198 *Id.*
199 *Id.*
200 *Id.*
201 *Grant*, 676 N.E.2d at 709.
203 *Id.*
204 See *Fossey*, supra note 133, at 414-416 (noting the disparity in the outcomes of cases containing similar facts and citing *Grant* as an example of how a court implicitly accepted *Eisel*-type duties, yet ruled in the contrary); see also Peter Lake & Nancy Tribbensee, *The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-Inflicted Injury*, 32 STETSON L. REV. 125, 126 (2002) (stating that the American legal system has been reluctant to hold institutions liable for suicide).
205 See *Milsom*, supra note 138, at 26 (stating that in *Eisel*, the court ruled that school counselors have a duty to use reasonable means to prevent a suicide when they are on notice of a child or adolescent student's suicidal threat); see also Carolyn Stone, *Suicide: A Duty Owed*, Guidance Channel
by state sanctioned and mandated suicide prevention. Furthermore, the strongest defense that schools have against student suicide suits is governmental immunity. Arguably, in a number of cases, if the school could not utilize the defense of governmental immunity, parents’ claims would have prevailed.

IV. CIVIL LIABILITY, CRIMINAL LIABILITY, AND SUICIDE

Undeniably, Daniel Scruggs was bullied at school and both his mother and school personnel failed to acknowledge the severity of the situation. By the time Daniel was in the 7th grade, his learning disability caused his scholastic success to plummet and the subsequent response of his support system was inadequate. However, it was not until Judith Scruggs was charged with risk of injury to a minor, four months after Daniel’s death, that any blame was placed on her in relation to Daniel’s emotional problems.

It is difficult to define what “constitutes psychological or emotional
neglect; it may arise from the emotional unavailability of the parent to the child.\textsuperscript{212} The goal in holding parents liable for emotional neglect is to help parents recognize their child’s emotional needs. Holding parents liable not only improves parent-child relationships, but it also requires state agencies and child welfare agencies to be aware of emotionally neglectful homes and to give parents the resources necessary for them to provide emotional support to their teenaged children. Above all, the goal of such liability is to save the lives of vulnerable adolescents.

\textbf{A. Civil Liability}

A suicide attempt is often viewed as a cry for help.\textsuperscript{213} When signs of suicidality and depression are ignored, it amounts to emotional neglect.\textsuperscript{214} As previously noted, the effects of emotional neglect are severe and are often perpetual.\textsuperscript{215} By exposing parents to civil liability, they are provided with an additional incentive to watch for their child’s possible suicidality and facilitate access to rehabilitative programs that can remediate the problem. Unfortunately, neither the medical community nor the legal community recognized emotional neglect until the middle of the 20th century.\textsuperscript{216} Due to this delayed societrical acknowledgment, legislatures were hindered from responding legislatively to the harm.\textsuperscript{217}

\textsuperscript{212} \textit{Id.} at 30.


\textsuperscript{214} MAVIN VENTRELL, \textit{CHILD WELFARE LAW AND PRACTICE} 29 (2005) (including in the definition of emotional neglect, the failure to provide treatment of the mental health and medical needs of one’s child); Steven W. Kairys et al., \textit{The Psychological Maltreatment of Children—Technical Report}, \textit{PEDIATRICS} Vol. 109 (April 2002) (stating that parental attributes in cases reported for psychological treatment include poor parenting skills, substance abuse, depression and suicide attempts).


\textsuperscript{216} Neeley, \textit{supra} note 93, at 698 (stating that “because of the medical fraternity’s long delay in recognizing the problem, coupled with the legal profession’s reluctance to intervene with family autonomy, initial attempts to address the problem of child maltreatment were limited to severe physical abuse causing the endangerment of life or permanent and serious physical injury”); see also Encyclopedia of Children and Childhood in History and Society: Violence Against Children, \url{http://www.faqos.org/childhood/Th-W/Violence-Against-Children.html} (last visited Mar. 8, 2009) (providing that “over the course of the twentieth century, attempts have emerged to root out violence against children and to expand its meaning to include emotional, social, and psychological abuse . . . ”).

\textsuperscript{217} See Neeley, \textit{supra} note 93, at 699 (noting that legislatures then responded by enacting several laws that specifically targeted emotional maltreatment and physical and sexual abuse); see also Judith G. McMullen, \textit{The Inherent Limitations of After-the-Fact Statutes Dealing with the Emotional and Sexual Maltreatment of Children}, 41 \textit{DRAKE L. REV.} 483, 487–88 (1992) (stating that most states’
There are several ways to establish civil liability of parents. For example, children can bring tort actions against their parents, and child welfare agencies can bring actions against parents. Additionally, a majority of jurisdictions have recognized the negligent or intentional infliction of emotional distress as a cause of action in tort that may be brought by a child against his or her parents. However, this type of action will not ameliorate the suicidality of a child nor provide his or her parents with an opportunity to actively engage in the child's life. Monetary compensation is a hollow remedy for those adolescents who have attempted to commit suicide—as money will not cure the teen's depression nor will it make parents alert to their child's needs.

The purpose of the child welfare system is to prevent sub-minimal parenting and to protect children from deficient parents. Ideally, the child welfare system exists to "promote the well-being of children by ensuring safety, achieving permanency, and strengthening families to successfully care for their children." The inability of legislators, courts, and welfare agencies to quantify emotional neglect, especially that of the "Judith Scruggs" parent, leads to adolescents not getting the treatment they need to combat depression and the other causes of their suicidality.

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218 See Neeley, supra note 93 at 704 (providing that "even the United States Supreme Court has observed that the intentional and outrageous infliction of emotional distress rarely advances the social good and that it is understandable that the majority of states do not afford the underlying conduct 'much solicitude' "; see also Daniel Givelber, The Right to Minimum Social Decency and the Limits of Evenhandedness: Intentional Infliction of Emotional Distress by Outrageous Conduct, 82 Colum. L. Rev. 42, 43 n.9 (1982) (listing the various jurisdictions in the United States that have adopted the Restatement (Second) §46 formulation of the tort of intentional infliction of emotional distress).

219 See Neeley, supra note 93, at 702. Supporters of parental immunity argued "the need to maintain familial harmony"; see also Mary Kate Keamey, Breaking the Silence: Tort Liability for Failing to Protect Children from Abuse, 42 Buff. L. Rev. 405, 437 (1994). Another rationale for supporting parental immunity was the "concern about the financial effects of tort liability on a family." See Connor & Reuter, supra note 8, at 144 (illustrating the "possibility] that the parent-adolescent relationship is related to the adolescent's emotional distress and that emotional distress, in turn, is predictive of later suicidality."); see also Koplin & Agathen, supra note 12, at 715 (noting that one of the most important factors in predicting suicide is lack of family support).


221 Sana Loue, Redefining the Emotional and Psychological Abuse and Maltreatment of Children," 26 J. Legal Med. 311, 322–23 (Sept. 2005). "Relatively few children are removed from their homes and relatively few adults are prosecuted for the emotional abuse of or injury to children." See, e.g., Nina Bernstein, Pattern Cited in Missed Signs of Child Abuse, N.Y. TIMES, July 22, 1999, at A1 (noting the rising number of abuse and neglect-related deaths).
Instead of trying to quantify emotions, legislators, courts, and welfare agencies should fortify the state’s child welfare system so that they can defer to the doctors and the programs that are equipped to make evaluations of an individual’s emotional health.

The concern here is with the “Judith Scruggs” parent: the parent who is over-worked, unavailable, and unable to provide their child with the love, support, and attention he or she deserves.224 The “Judith Scruggs” parent is not an unfit parent. Judith Scruggs and those parents like her are the types of parents who could benefit from the treatment and supportive resources offered by child welfare agencies.225 Agencies provide parent education, cleaning services, parent counseling, in-home family therapy, and parent aides in the home.226 Had Daniel’s suicide attempt been unsuccessful, the child welfare agencies – the DCF or another agency – could have brought a civil child neglect proceeding, on behalf of the state, against Judith. The remedies for such a suit against parents brought by the state could potentially result in the state providing family counseling, parenting classes, and other suicide prevention programs so that parents can actively aid in the emotional well-being of their children.227

Since teenagers have the ability to think abstractly, like their parents, they are able to synthesize and understand the different alternatives to “their family situation and the consequences of these alternatives.”228 The usual remedy of alternative placements in state custody is not a readily

224 See generally Avi Salzman, Court Ruling Clears Mother in Son’s Suicide, N.Y. TIMES, Aug. 29, 2006 available at http://www.nytimes.com/2006/08/29/nyregion/29mother.html (noting that Daniel’s mother was a struggling single parent who worked 60 hours a week when Daniel died and that their house smelled of garbage due to her neglect); see also Santora, supra note 51 (stating that [Judith Scruggs] “admitted that she failed to give her son proper counseling”).

225 See Suicide of a 12-Year-Old, supra note 2 (arguing Judith Scruggs did not want her son to die and his suicide may have been prevented in a system of accountability); see also Gillies, supra note 31, at 133 (explaining that the court determined that the condition of the house was likely to harm Daniel’s emotional state, which is something Judith Scruggs was unlikely to know was criminal).

226 See CHILD WELFARE LAW AND PRACTICE, supra note 214, at 75 (concluding that the use of “multidisciplinary teams can be extremely valuable”); see also Sheri Bonstelle & Christine Schessler, Adjourning Justice: New York State’s Failure to Support Assigned Counsel Violates the Rights of Families in Child Abuse and Neglect Proceedings, 28 FORDHAM URB. L.J. 1151, 1203–04 (2001) (describing the range of parent services that child welfare agencies provide).

227 CHILD WELFARE LAW AND PRACTICE, supra note 214, at 75 (reiterating the possible services child welfare agencies can provide); see Child Welfare Information Gateway, supra note 221 (enumerating the different types of programs that different welfare agencies provide families in need to keep families healthy, happy, and together); see generally, CHILD WELFARE LAW AND PRACTICE, supra note 214 (noting that parents do not have to admit neglect because courts make their own findings).

228 CHILD WELFARE LAW AND PRACTICE, supra note 214, at 69 (suggesting that adolescents are capable of understanding the consequence between various family placement alternatives); see Elisa Poncz, Rethinking Child Advocacy After Roper v. Simmons: “Kids are Just Different” and “Kids are Like Adults” Advocacy Strategies, 6 CARDozo PUB. L. POL’y & ETHICS J. 273, 313 (2008) (arguing that once kids reach a certain age, their wishes are likely to be analogous their best interest).
available solution for adolescents.\textsuperscript{229} Besides the fact that few foster care facilities have the ability to deal with problematic teenagers, many of these teens do not want to be removed from their parents' home, despite the parental neglect.\textsuperscript{230} In these cases, the wishes of the adolescent must be respected unless he or she would be left in an extremely high-risk environment.\textsuperscript{231}

Undoubtedly, there are some parents who, despite clear evidence, will not admit that they are neglectful.\textsuperscript{232} These parents either do not want to change or are “untreatable parents who fail to respond to . . . treatment.”\textsuperscript{233} In these worst-case scenarios, the state could gain temporary custody of the parents' children, at least temporarily, until the parents are able to provide a stable, loving, and nurturing home environment.\textsuperscript{234}

The Dependency Court is the part of the juvenile court that deals with cases of child maltreatment.\textsuperscript{235} Today the Dependency Court system's purpose is to "serve the best interest of the child" – a goal often referred to as the "child-centered principle."\textsuperscript{236} Civil suits brought against parents, by

\textsuperscript{229} \textit{Child Welfare Law and Practice}, supra note 214, at 69 (stating that the alternative placement options for adolescents are generally more limited); see Jennifer Sapp, \textit{Aging Out of Foster Care: Enforcing the Independent Living Program Through Contract Liability}, 29 Cardozo L. Rev. 2861, 2877 (2008) (discussing the insufficient assistance that state programs provide to children aging out of foster care).


\textsuperscript{231} \textit{Child Welfare Law and Practice}, supra note 214, at 69 (arguing that the child should be allowed to remain with his or her parents unless it would place him or her in extreme danger); Appell, \textit{supra} note 230, at 598 (proposing that attorneys representing adolescents should comply with their wishes with regard to family placement based on their mature reasoning).

\textsuperscript{232} \textit{Child Welfare Law and Practice}, supra note 214, at 92 (stating that some parents will not admit they are neglectful despite the presence of compelling evidence); see \textit{Suicide of a 12-Year-Old}, \textit{supra} note 2 (noting that Judith Scroggs refused to admit any fault in the death of her son, placing the blame on bullies and the school).

\textsuperscript{233} \textit{Child Welfare Law and Practice}, supra note 214, at 92 (commenting that parents who will not admit negligence are unwilling or unable to change).

\textsuperscript{234} \textit{Id.} at 69 (arguing that placing a child in temporary state custody may be a beneficial solution until the situation in the natural home improves); see James G. Dwyer, \textit{A Taxonomy of Children's In State Decision Making About Their Relationships}, 11 WM. & MARY BILL RTS. J. 845, 948 (explaining that most social service agencies view foster care as a temporary placement until the child can be returned to his or her parents or adopted).

\textsuperscript{235} \textit{Child Welfare Law and Practice}, supra note 214, at 113, (noting that child maltreatment is the term used to describe all forms of child abuse and neglect); Inger Sagatun-Edward & Coleen Saylo, \textit{A Coordinated Approach to Improve Outcomes for Substance-Abusing Families in Juvenile Delinquency Court}, 51 JUV. & FAM. CT. J. 1, 2 (2000) (stating that the Dependency Court deals with neglect and abuse of children).

\textsuperscript{236} \textit{Child Welfare Law and Practice}, supra note 214, at 140, (noting that the Dependency Court process is meant to serve the best interest of the child); John C. Lore III, \textit{Protecting Abused, Neglected, and Abandoned Children: A Proposal for Provisional Out-of-State Kinship Placements}
welfare agencies on a state’s behalf, can force parents into treatment programs and perhaps make parents acknowledge their child’s needs. The agencies bringing these suits will help the “Judith Scruggs” parents balance their personal and professional responsibilities.237

B. Criminal Liability

Every jurisdiction has statutes that punish emotional neglect, distress, and parental negligence as crimes.238 The _actus reus_ of these crimes can be a voluntary act or an omission. An omission is a failure to act.239 Omissions are only crimes when the defendant has a duty to act.240 As a parent, at common law, there is a status relationship where a parent owes a duty to a child to act when the child is in harm’s way.241 In order for there to be criminal liability, the parent must have the ability to help, knowledge of the risk, and knowledge of the duty owed.242 In terms of suicidal adolescents, parents have a duty to act— to help their children to the best of their ability. Today, there is a plethora of anti-depressants, psychiatrists, psychologists, counselors, and clinics available to help teenagers who are emotionally unwell.243 Parents have the ability to ameliorate the potential


238 _See Marygold S. Melli, Protecting Children in Child Abuse and Neglect Proceedings (2008), available at http://parenthood.library.wisc.edu/Melli/Melli.htm (“All states have statutory provisions outlining programs of protective services for children who are abused and neglected.”); Susan K. Smith, Mandatory Reporting of Child Abuse and Neglect (2007), available at http://www.smith-lawfirm.com/mandatory_reporting.htm (“All 50 states have passed some form of mandatory child abuse and neglect reporting law in order to qualify for funding under the Child Abuse Prevention and Treatment Act ...”).

suicidality of their children using these resources. When a child is born an automatic duty is placed on parents to provide that child with everything he or she needs and deserves, “which includes meeting the child’s emotional needs.” Parents who live with their own children should be able to detect when a child poses a risk to him or herself simply because they are with the child for approximately 18 hours a day; if parents pay attention to their child, many will notice unusual or unhealthy symptoms. When an adolescent commits suicide and the parents of the teenager took no corrective action to help the teen, then parents should be held criminally liable.

When an adolescent commits suicide, any potential liability of the parents is no longer founded in civil liability. It becomes a crime because the child is dead and the child cannot seek damages for the parents’ actions or inactions. Similarly, and a child welfare case will not suffice. Sometimes a parent acts recklessly by consciously disregarding the risk that a child poses to him or herself because it is easier to pretend the child is fine and “just being a teenager,” than it is to admit there is something wrong and the child needs help. However, a reasonable parent would not ignore this risk. Avoidance or ignorance is a gross deviation from the standard of conduct that a reasonable parent practices. Some of treatment, such as drugs and psychotherapy, available to children diagnosed with depression).

244 See Murphy, supra note 22, at 19–20, 26, 28 (explaining the different treatments available for depressed children and the importance of family involvement); see also Depression and Teens: A Guide for Parents, http://www.youngwomenshealth.org/depression_parents.html (last visited Mar. 8, 2009) (announcing different methods of treatment and the ways in which parents can access them).

245 See HENDRIKA B. CANTWELL, The Neglect of Child Neglect, in THE BATTERED CHILD 347, 348 (Mary Edna Helfer et al. eds., 5th ed. The University of Chicago Press 1997) (stating that neglect is the failure of a parent to fulfill the parental duty to provide for the child); see also Unconditional Love, supra note 63 (suggesting that if potential parents cannot provide a child with all it deserves then they should avoid conceiving, find a suitable adoptive family, or decide to raise a child properly).

246 See Gillies, supra note 31, at 153-55 (noting that authorities’ explanations that Scruggs was not being convicted for her son’s suicide, but for having a messy house, were disingenuous as there would have been no criminal conviction had he not succeeded in the suicide); see also Eric C. Shedlosky, Comment, Protecting Children from the Harmful Behavior of Adults, 98 J. CRIM. L. & CRIMINOLOGY 299, 301 (2007) (maintaining that while Scruggs was not convicted for her son’s suicide per se, she was convicted for keeping a home so filthy that it caused him the emotional harm that led him to suicide).

247 Compare DRESSLER, supra note 240, at 154 (3d ed. Thomson West 2003) (stating that the mens rea of recklessness occurs when a person consciously disregards a substantial and unjustifiable risk that the element exists or will result from his or her conduct and the risk’s disregard must involve a gross deviation from the standard of conduct that a law-abiding person would observe in the actor’s situation), with Judith Inglish Schneiderer, Note, When Children Die as a Result of Religious Practices, 51 OHIO ST. L.J. 1429, 1435 (1990) (explaining that the level of culpability required in cases in which parents allowed their children to die because of religious beliefs regarding illness was a conscious disregard of the risks, or recklessness).

248 See DRESSLER, supra note 240, at 154 (noting that recklessness involves the knowledge of a risk and the decision to ignore that risk); see also Schneiderer, supra note 248, at 1435 (clarifying that in order to prove recklessness, the state must prove the defendant knew there was a risk and ignored it).

249 See DRESSLER, supra note 240, at 155 (explaining that the failure of a person to see a risk that
parents act negligently because they fail to perceive the risk posed by the child’s troubled mental state. Consequently, failing to be aware of this risk is a gross deviation from the conduct a reasonable parent would display.

With regard to Judith Scruggs, a reasonable parent would have observed that Daniel was mentally troubled when he refused to shower, defecated in his pants regularly, and slept with a knife under his bed and a spear in his closet. Judith’s failure to take proactive measures to help her son constitutes a substantial deviation from the standard of conduct that a reasonable parent would exercise. Judith acknowledged that Daniel had difficulties at home and at school, but she failed to “assess and address” Daniel’s problems. While Judith reported that she attempted to contact a children’s clinic to pursue guidance for Daniel, there was no record of her attempt and she never took Daniel to a doctor or therapist for an evaluation of his symptoms. Daniel was never “referred to, or seen by, a physician they should have seen is a deviation from the standard of care exercised by reasonable people); see also Schneiderer, supra note 248, at 1437 (finding that a reasonable person would have been aware of her own daughter’s illness and sought medical care).

250 See DRESSLER, supra note 240, at 155 (stating that the mens rea of negligence occurs when a person should have been aware of a substantial and unjustifiable risk that the element exists or that the conduct might give a result and the risk be of the nature that the actor’s failure to perceive it, considering the circumstances is a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation); cf. Schneiderer, supra note 248, at 1437 (holding that it was negligent of a mother to fail to perceive the risks posed to her daughter’s life by her daughter’s physical state, or illness).

251 See DRESSLER, supra note 240, at 155 (commenting that a person is negligent when he or she “inadvertently creates a substantial and unjustifiable risk of which he ought to be aware”); cf. Jennifer M. Collins, Crime and Parenthood: The Uneasy Case for Prosecuting Negligent Parents, 100 NW. U. L. REV. 807, at 818 (2006) (demonstrating how under a similar pretext, maternal “neglect-omission” has led prosecutors to bring fatal neglect charges against parents for failing to provide their child with proper medical care).

252 See Scruggs, 279 Conn. 698, at 701 (citing the facts which the jury found in convicting Judith Scruggs); see also Suicide of a 12-Year-Old, supra note 2, at 2–3 (noting all the obscure behavior and conduct demonstrated by Daniel Scruggs).

253 See Scruggs, 2004 WL 1245557, at *7 (denying Judith Scruggs’ motion for acquittal, the Superior Court found that “any layperson with common sense could conclude that the squalor and home living environment here created a risk to Daniel’s emotional health”); see also DRESSLER, supra note 240, at 155 (suggesting a reasonable parent under the circumstances would have recognized the severity of such peculiar behavior, and taken subsequent action to get his or her son the necessary psychological and educational treatment).

254 See CHILD ADVOCATE, supra note 29, at 22 (stating that no adult actually intervened to evaluate or treat Daniel’s problems); see also Matthew Gilbert, A Bitter Search for Answers in a Troubled 12-Year-Old’s Suicide, COURT TV NEWS, Sept. 19, 2003, available at http://www.courttv.com/trials/news/0903/091903_scruggs_ctv.html (quoting Daniel’s school guidance counselor, in a report to the Department of Children and Family Services, as saying Daniel “has a long standing problem with body odor, foul smelling clothes, and bad breath due to poor dental habits, which his mother has tried to address but has not been successful. Mother has attempted to get him into counseling, but he refuses to attend”).

255 See CHILD ADVOCATE, supra note 29, at 22 (finding that “[a]lthough the clinic was aware of J. Daniel through a previous family referral several years prior, they reported having no record of having
for soiling [his pants], truancy, moodiness’ or treated for any of the other behavior problems he regularly exhibited after meeting with a urologist in 1997 due to his encopresis condition.256 Although the urologist recommended that Judith return if his soiling problem worsened, she never did.257 Additionally, “when [Daniel] refused to go to school, [Judith] left him alone and unsupervised while she reported to work.”258 Judith did not provide Daniel with the proper psychological treatment he needed, thus demonstrating her denial over the severity of Daniel’s condition.259 Judith’s failure as a parent went beyond keeping a “messy home.” With a plethora of resources available to her, she failed to provide Daniel with the love, support, and professional help he needed to improve his emotional and academic problems.

C. The Benefit Outweighs the Harm

It is important to note the strong resistance that exists against expanding liability, either civil or criminal, for parents of adolescents that commit suicide or attempt to do so.260 Favorable results may occasionally arise out of harsher parenting methods.261 Falling under the umbrella of parental seen or receiving a referral for the boy prior to his death.”); see also Suicide of a 12-Year-Old, supra note 2 (highlighting Judith’s failed attempt to convince Daniel to go to counseling, and her acceptance that he did not need counseling, but rather needed to escape bullying).

256 See CHILD ADVOCATE, supra note 29, at 28 (explaining that encopresis is the term used when a child who has learned to voluntarily control his bowel movements soils himself, absent of any underlying disease to the child); see also Gillies, supra note 31, at 136 (noting that the school gave Judith a list of community service providers and counselors who may help Daniel’s hygienic problems; unfortunately, she failed to contact any of them).

257 See CHILD ADVOCATE, supra note 29, at 28 (explaining OCA had found no record of the boy being seen by the nurse for incontinence after third grade); see also Gilbert, supra note 255 (noting Ms. Scruggs’ recognition that poor hygiene may be the cause of the bullying).

258 CHILD ADVOCATE, supra note 29, at 22.

259 See CHILD ADVOCATE, supra note 29, at i–iii (providing an executive summary of the facts surrounding Daniel Scruggs’ death); see also Gillies, supra note 31, at 137–38 (stating that despite school officials requests’ to move Daniel into SWAS (a program for socially and emotionally disturbed children) for psychiatric evaluation in response to his abnormal behavior, Judith refused to allow Daniel to attend. Consequently, this lack of cooperation precluded an evaluation which would have included a depression and suicide screening).

260 See David Crump, Evaluating Independent Tort Based upon “Intentional” or “Negligent” Infliction of Emotional Distress: How Can We Keep the Baby from Dissolving in the Bath Water?, 34 ARIZ. L. REV. 439, 448 (1992). While allowing individuals to bring torts, such as a tort for intentional infliction of emotional distress, has many benefits, it also has a high social cost. See also Neeley, supra note 93, at 715. Unfortunately, emotional distress claims are often “parasitic” suits that occur under the umbrella of a completely separate domestic tort. Id. at 714–15. Furthermore, emotional liability claims against parents are not likely to be welcomed carte blanche by the courts as an independent cause of action allowing children to sue their caretakers. Id. at 715.

261 See Crump, supra note 261, at 449 (stating mental distress is a necessary part of many valuable human experiences); see also Neeley, supra note 93, at 715 (discussing several situations in which unkind treatment by parents may benefit children).
discretion or authority - a parent, for example, might confine a child to hours of solitude in his or her room for doing something wrong as a means to teach the child not act that way in the future.\textsuperscript{262} However, a question arises as to where to "draw the proper line of demarcation" between parental conduct being harmful to the emotional stability of his or her child and the parental behavior that is "warranted, corrective, and even morally therapeutic."\textsuperscript{263} Furthermore, what about the subtler acts of parents that can "mentally devastate" a teenager by ways that objective third parties cannot synthesize?\textsuperscript{264} In today's society, statistics suggest that 80 to 95% of people have grown up in dysfunctional homes and did not receive "the love, nurturing, and guidance necessary to form healthy relationships and to feel good about themselves . . . ."\textsuperscript{265} If the majority of jurors and judges were emotionally neglected as children and teenagers, and continue the dysfunctional parenting cycle by treating their own children with the same detachment, how can they be expected to objectively identify other parents who fail to meet their emotional duties to their children?\textsuperscript{266} This demonstrates the vicious cycle of emotional instability that is perpetuated by the failure to recognize its damaging effects.\textsuperscript{267}

The case of Judith Scruggs raised a cacophonous storm of protestation in opposition of the state's action against the mother.\textsuperscript{268} Scruggs' lawyer, after
her conviction, announced that "[w]hen the jury found Mrs. Scruggs guilty on this charge, it basically found her guilty of having a messy house . . . [the case set a] dangerous precedent for any parent who has a child who commits suicide, who must now worry that the state will point a finger at the grieving parent."269 Those against the charges and conviction of Judith argued that prosecuting her was "inhumane."270 Many legal authorities believe that holding Judith responsible for the death of Daniel was taking parental responsibility "too far."271 Scholars have gone further to say that the only reason for holding Judith accountable for Daniel's death is because society is looking to blame someone and "if [society] can blame the parents, we are then able to look away from other circumstances that contributed to his death, and feel better about ourselves, because we can think we have done something to protect a child."272

Notably, there were a number of people in Daniel's life that failed to identify the gravity of Daniel's fragile state of mind.273 Hindsight is twenty-twenty and without it, it is difficult to determine the emotional state of people and potential risk of harm they pose to themselves.274

Also, it has been argued that bringing criminal charges against Judith would hinder the goal of welfare agencies, like DCF in Daniel's case, because it would redirect Judith's energy and time away from fixing the bullying; see also Putting Blame on Parents when Children are Troubled, THE AGE, Oct. 11, 2003, http://www.theage.com.au/articles/2003/10/10/1065676157126.html?from=storyrhs (claiming that applying parent liability to child suicide takes the principle too far).

269 Putting Blame on Parents, supra note 269.

270 See id. (commenting that social worker and author, Janna Malamud Smith, was shocked by the decision); see also Santa Mendoza, Scruggs Case a Study in Overreaching Justice, The Connecticut Law Tribune, Nov. 31, 2004, available at http://www.law.com/jsp/PubArticle.jsp?id=900005408678 (mentioning that criminally prosecuting Scruggs would be unfair and "fly in the face of the requirements of direct causation").

271 See Putting Blame on Parents, supra note 269 ("New York University law professor Martin Guggenheim said that there was a principle in most societies 'of holding parents responsible for the death of a child, but it is definitely new to apply that to a suicide, and in my view it goes too far.'"); see also Scruggs, 905 A.2d at 36-37(Conn. 2006) (holding that Scruggs' housekeeping did not amount to unlawful conduct unless the state proved beyond a reasonable doubt that the defendant had at least constructive knowledge of the potential for mental harm to the child).

272 Putting Blame on Parents, supra note 269.

273 See Gillies, supra note 31, at 154 (describing school officials who took no action despite knowledge that Daniel was being picked on at school constantly); see also Helen O'Neil, Many Ignored Troubled Boy Until Too Late, ORLANDO SENTINEL, Jan. 18, 2004, at A21 (detailing those that failed to intervene and prevent Daniel Scruggs' suicide).

274 See Gillies supra note 31, at 154 ("For example, the school officials recognized Daniel was picked on, and they attributed this to his bad hygiene, but they could not bathe Daniel. Judith saw a kid with bad hygiene because he did not want to go to school, yet she could not change how he was treated at school."); see also Jeanee Milstein, 2003 Annual Report, Advisory Committee to the Office of the Child Advocate, State of Connecticut, 10 (2003), available at http://www.ct.gov/oca/lib/oca/oca_annual_report_2003.doc (detailing how Daniel Scruggs' safety system failed to recognize his emotional disturbance).
broken situation and towards defending herself. Furthermore, Judith was charged based on a risk of injury statute, which provides for punishment of up to ten years in prison. If she received the maximum sentence, the reunification process of her family would be extremely suspended. In the case of suicide, prosecuting parents will harm the surviving children, who are trying to cope with the loss of their sibling. On the other hand, if the parents are not held accountable on some level, the surviving children will be at risk for the same emotional neglect that led to their sibling’s suicide in the first place.

With regard to Daniel, critics of the prosecution suggest that there is no evidence that Daniel was unhappy being at home, or that his home-life contributed to his suicide – they point to the fact that he willfully stayed home from school. Yet, these critics fail to acknowledge that Daniel was only 12-years-old and without any family or friends outside of his nuclear home. These critics suggest that if Daniel was unhappy at home, he would have left, but where would he have gone? His grandparents were not alive, he did not have a father, and he was friendless. There was nowhere

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275 See Gillies supra note 31, at 154 (noting that criminal charges are not traditionally brought against parents due to a “messy home” because it would break Connecticut’s goal of keeping families together and united); see also CBS News, Suicide of a 12-Year-Old (Oct. 29, 2003), available at http://www.cbsnews.com/stories/2003/10/28/60IU/main580507.shtml (describing the feelings of certain jurors who felt that counseling would do Judith more good than incarceration).

276 See Gillies, supra note 31, at 154; see also Scruggs, 905 A.2d at 26–27 (detailing the Connecticut Risk of Injury to a Child statute).

277 See Gillies, supra note 31, at 154. As is the case in Connecticut, when a child is removed from his or her home, the DCF child welfare agency will work with the parents to remedy the situation quickly, so it can reunify the family as fast as possible. Id. CBS News, supra note 276. The article remarks that Judith will face up to 10 years in prison. Id.

278 See Gillies, supra note 31, at 154 (proposing that the only time keeping the family intact would not be as big of a concern is if the child who commits suicide was an only child); see also Candra Bullock, Low-Income Parents Victimized by Child Protective Services, 11 AM. U.J. GENDER SOC. POL’Y & L. 1023, 1029 (2003) (highlighting that “both parents and children are owed . . . protection against the state’s interference with their fundamental interest in family integrity.”).


280 See Gillies, supra note 31, at 157. “These critics point out that no matter how squalid or cluttered the court found the house, the facts support the idea that Daniel enjoyed being home and considered it a haven from the bullies he encountered at school.” Id. See also Posting of Old Soul Flame, http://nielsenhayden.com/makinglight/archives/003756.html (Jan. 28, 2004). Daniel “considered his home, especially his own closet, to be a haven away from the ‘hell’ called school.”

281 See CHILD ADVOCATE, supra note 29, at i (noting that Daniel was bullied to an extreme). See also Stacey Stowe, Boy Who Sought Help Was Seen as a Target, N.Y. TIMES, Oct. 7, 2003 at B5, available at http://www.nytimes.com/2003/10/07/nyregion/boy-who-sought-help-was-seen-as-a-target.html?sec=health (describing instances where Daniel was pushed off gymnasium bleachers or had “kick me” signs on his back).

282 See CHILD ADVOCATE, supra note 29, at i (stating that Daniel’s grandparents were deceased and his father left when he was only three-months-old); see also Stowe, supra note 282, at B5 ( remarking that Daniel had virtually no friends).
for him to escape and his desire to confine himself to solitude acts as an indicator that he was emotionally unstable. It is rare to find a 12-year-old boy who would rather stay locked in his room than play with friends.

Finally, critics have argued that charging a parent after the suicide of a child serves no purpose because the child that the risk of injury statute is intended to protect is already dead and the justifications of deterrence are not persuasive. The purpose of deterrence is to deter others in society from acting the same way, but “the system should not deprive a person of their freedom for the purpose of sending a message.” This message of general deterrence would be disseminated through the media and news stories of the child’s suicide and the parent’s subsequent prosecution. This argument fails to consider that the main principle of criminal punishment is utilitarianism, which seeks to punish wrongdoers in a way that will benefit society and prevent future similar crimes from occurring. Criminally punishing Judith does provide a benefit for society. By putting other parents on notice of the potential punishment for failing to address a child’s psychological needs, criminal liability causes parents to become more proactive in the emotional development of their children and more alert and aware of behavior that might be a sign that children are suicidal and need help and attention.

CONCLUSION

The story of Daniel Scruggs is tragic and heartbreaking. Daniel, like so many other young adolescents in this country, was failed by his parent. Reasonable parents of Daniel Scruggs, working at the school their son attended, would have been more proactive in providing remedies for their dysfunctional son. Reasonable parents who took all measures they could to

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283 See Gillies, supra note 31, at 155 (commenting that a criminal charge cannot benefit the child that died); see generally Santora, supra note 41, at B1 (noting that it was the first case in which prosecutors in Connecticut criminally charged a parent in connection with the suicide of her own child, which was unusual following a suicide).

284 See Gillies, supra note 31, at 155–56 (declaring that deterrence is a secondary benefit of the penal system that should not be confused with its primary purpose).

285 Id. at 156. See James J. Duane, What Message are We Sending to Criminal Jurors When We Ask Them to “Send a Message” With Their Verdict?, 22 AM. J. CRIM. L. 565, 650 (1995) (adding that the message of deterrence can also be disseminated by juries with their verdicts).

286 See DRESSLER, supra note 240, at 35; see also Joshua Dressler, General: The Wisdom and Morality of Present-Day Criminal Sentencing, 38 AKRON L. REV. 853, 854 (2005) (finding that most people would say the basis for our criminal justice system is primarily utilitarian).

287 See DRESSLER, supra note 240, at 35–36 (explaining the concept of general deterrence, in which punishment is aimed at preventing other people in the general population from committing the same undesirable acts); see also Duane, supra note 286, at 613 (stating that general deterrence dissuades others from committing the same crime).
provide support and help for their ailing child would not be civilly or criminally liable for their child who still attempted or even succeeded in killing him or herself. The overall purpose of holding parents liable for their child’s attempt or suicide would not be fulfilled in such situations where the parents take proactive roles in their children’s lives.

Whether Daniel would have survived, if he had received the proper help he needed, will forever remain a mystery. However, parents who fail to take action to help their children, those who emotionally neglect their children, need to be held liable for the attempted suicide or suicide of their child. The purpose of such liability is to alert parents to the possibility of liability and ignite an era of proactive parenting.