

**A NEW WAY TO PUNISH PARENTS: REDUCED OFFENSE
CULPABILITY**

PAUL HAVERN[†]

I. INTRODUCTION	494
II. THEORIES OF CRIMINAL PUNISHMENT	496
<i>A. Retributive Theory</i>	498
<i>B. Utilitarian Theory</i>	499
III. HISTORY OF PARENTAL LIABILITY	500
<i>A. History of Parental Civil Liability—Common Law and Statutory Law</i>	501
<i>B. History of Parental Criminal Culpability</i>	503
<i>C. New Form of Parental Criminal Culpability: Reduced-Offense Culpability</i>	507
<i>D. An Example: The Oxford Case</i>	507
IV. APPLICATION OF THEORIES OF PUNISHMENT TO THE OXFORD CASE	511
<i>A. Retributive Theory and Reduced-Offense Culpability</i>	512
1. <i>Assaultive Retributivism: Violation of Victim’s Rights</i>	512
2. <i>Protective Retributivism: Gain of an Unfair Advantage</i>	513
3. <i>Victim Vindication: Moral Elevation of Offender Rights</i>	516
4. <i>Retributive Theory Conclusions</i>	518
<i>B. Utilitarian Theory and Reduced-Offense Culpability</i>	519
1. <i>Deterrence</i>	519
2. <i>Incapacitation</i>	523
3. <i>Rehabilitation</i>	527
4. <i>Utilitarian Theory Conclusions</i>	529
V. CONCLUSION	530

[†] B.S., 2022, Cornell University; J.D., expected 2026, Wayne State University Law School. I thank Professor Dan Ellman for his help on this project.

I. INTRODUCTION

In December 2021, for the first time in U.S. history, the parents of a school shooter were charged with four counts of manslaughter after their son, Ethan Crumbley (“Ethan”), brought a handgun to school and killed four of his classmates.¹ In February 2024, Michigan jurors convicted the parents, Jennifer and James Crumbley, on all manslaughter charges, and both were sentenced to ten to fifteen years in the “Oxford case.”² These unprecedented verdicts set the stage for holding the parents of children convicted of murder accountable in criminal court. In October 2024, less than a year after Jennifer and James’s convictions, Colin Gray, the parent of a Georgia school shooter, was similarly charged with involuntary manslaughter after his son opened fire in a high school (the “Georgia case”).³ While still pending, the Georgia case follows the precedent established in the Oxford case.⁴

Parents now face exposure to criminal culpability for the acts of their children in a unique way. Before the Oxford and Georgia cases, prosecutors had two primary methods for assigning criminal culpability to the parent of a child offender.⁵ One method was to charge the parent under statutes explicitly concerned with parenting, such as the misdemeanor offense of contributing to the delinquency of a minor (CDM).⁶ The other method was to charge the parent with the same crime as the child using accomplice liability, under the theory that the parent aided or abetted the child’s offense.⁷ With these Oxford and Georgia cases, though, a third method has entered the fray with prosecutors now potentially opting to charge parents with a lesser but related crime based on the actions of the children.⁸ For example, in the Oxford case, Ethan faced first-degree murder charges, while his parents each faced an involuntary manslaughter charge, a lesser but related offense to murder.⁹ Similarly, in the Georgia

1. Sara Powers, *Charges Against Georgia High School Shooter’s Dad Echo Precedent Set in Historic Crumbley Case*, CBS (Sep. 6, 2024, at 13:37 ET), <https://www.cbsnews.com/detroit/news/georgia-school-shooter-father-charges-ethan-crumbley-precedent/> [<https://perma.cc/W6J8-6LQL>].

2. *Id.*

3. Tim Darnell, *Suspected Ga. High School Shooter Will Face More Charges, DA Says*, ANF (Sep. 6, 2024, at 07:09 ET), <https://www.atlantaneewsfirst.com/2024/09/06/suspected-georgia-high-school-shooter-appearing-court/> [<https://perma.cc/747W-6R22>].

4. *Id.*

5. *See infra* Part III.

6. *See infra* Part III.

7. *See infra* Part III.

8. *See infra* Part III.

9. Powers, *supra* note 1; Darnell, *supra* note 3.

case, the child faced first-degree murder charges, while his parent faced involuntary manslaughter charges.¹⁰ Under this scheme, these parents risk a punishment more severe than a misdemeanor CDM, but less severe than they would under accomplice liability. This Note examines this new form of culpability, which will be called “reduced-offense culpability.”¹¹

This Note begins with a consideration of whether either of the two predominant theories of punishment (retributivism and utilitarianism) justify reduced-offense culpability. Justification for punishment is more than a theoretical exercise: punishment is most effective if offenders intrinsically believe they are deserving of that punishment.¹² This analysis evaluates how society may justify the punishment of some, but not all, parents of offenders, using the Oxford case as an illustrative example.¹³

Section II details the elements of each theory of punishment and its most important aspects. Beginning with retributive theory, which centers on the concept of an offender being morally blameworthy,¹⁴ Section II explains how the three specific forms of retributivism (assaultive, protective, and victim vindication) operate. Utilitarian theory is then examined, including its subcomponents (general deterrence, specific deterrence, incapacitation, and rehabilitation), with a central focus on the theory’s cost-benefit analysis.¹⁵

Section III turns to the history of parental punishment and its initial justifications.¹⁶ Tracking how common and statutory law developed regarding parental liability in the civil context reveals how the goals of deterrence and victim compensation formed the foundation for parental responsibility for the actions of their children.¹⁷ Section III then shifts to the history of parental criminal culpability and its justifications. Like parental punishment under civil law, parental punishment under criminal law also considered deterrence of harmful behavior in order to justify punishment.¹⁸ The final part of Section III explains how prosecutors in the Oxford case developed reduced offense liability as a separate theory.¹⁹

10. Darnell, *supra* note 3.

11. This term is of the author’s creation. For the purposes of this Note, the author uses the following definition for reduced-offense culpability: a situation where a child commits a crime and the prosecutor charges a parent with a related offense where the severity of punishment is higher than under a misdemeanor CDM and lower than under accomplice liability.

12. *See infra* Part II.

13. *See infra* Part II.

14. *See infra* Part II.

15. *See infra* Part II.

16. *See infra* Part III.

17. *See infra* Part III.

18. *See infra* Part III.

19. *See infra* Part III.

Section IV considers whether reduced-offense culpability is justified under retributive and utilitarian theories of punishment. This Note concludes that there are limited circumstances where retributive theories justify punishment under reduced-offense culpability.²⁰ In particular, assaultive retributivism justifies punishment when there is a causal link between the parent's behavior and the child's crime; protective retributivism justifies punishment when the parent had sufficient resources to fulfill their parenting obligations but improperly allocated those resources; and victim vindication justifies punishment when the parent recognizes the risk of harm the child poses but chooses to ignore those risks.²¹

This Note also concludes that utilitarianism justifies punishment of the parent in a reduced-offense culpability case when the overall benefits outweigh the costs.²² Under utilitarian theory, reduced-offense culpability will deter parents from engaging in harmful parenting when people are aware of the parental conduct giving rise to criminal charges, as well as the severity of the punishment.²³ Consideration must be given to whether the parent is likely to harm others upon release or has a risk of repeating the harmful parenting conduct.²⁴ Because of societal concerns, the cost-benefit analysis should not consider whether the parent has other children.²⁵ An important component of utilitarianism, rehabilitation, proves challenging because of the limited number of existing prison programs as well as the personal nature of parenting.²⁶ Ultimately, because the Oxford case is the first prosecution of the parent of a child committing a school shooting,²⁷ the benefits of deterrence significantly outweigh the costs of incapacitation and rehabilitation. Therefore, utilitarian theory justifies reduced-offense culpability in this particular case.²⁸

II. THEORIES OF CRIMINAL PUNISHMENT

Existing academic research on parental liability has analyzed its application and effectiveness, arguing for or against its use on this basis

20. *See infra* Part IV.

21. *See infra* Part IV.

22. *See infra* Part IV.

23. *See infra* Part IV.

24. *See infra* Part IV.

25. *See infra* Part IV.

26. *See infra* Part IV.

27. *See infra* Part IV.

28. *See infra* Section IV.B.

alone.²⁹ Specifically, the research examines whether parental liability statutes are unconstitutionally vague, a due process violation, or effective in reducing juvenile crime.³⁰ However, little research has been dedicated to thoroughly examining parental liability under the retributive and utilitarian theories of punishment.³¹ The existing research on how parental culpability fits within retributive and utilitarian theories of punishment limits itself to CDM statutes.³² This Note fills a gap in the scholarship on parental liability by examining reduced-offense culpability through a more comprehensive retributive and utilitarian lens.

Scholarship on reduced-offense culpability is crucial because this form of punishment is likely to grow in prevalence.³³ Because we should not punish without a reason for doing so, potential utilitarian or retributive justifications for criminal punishments are foundational in imposing consequences on those who have committed a criminal offense.³⁴

29. See, e.g., A. Dale Ihrle III, *Parental Delinquency: Should Parents Be Criminally Liable For Failing To Supervise Their Children?*, 74 U. DET. MERCY L. REV. 93 (1996) (arguing that parental responsibility laws under a negligence standard are the best way to ensure parents provide basic moral guidance); Christine T. Greenwood, *Holding Parents Criminally Responsible For The Delinquent Acts Of Their Children: Reasoned Response Or “Knee-Jerk Reaction”?*, 23 J. CONTEMP. L. 401 (1997) (recommending that parental responsibility statutes should be construed narrowly and urging the use of prevention programs); Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 WIS. L. REV. 399 (arguing that parental liability statutes are unnecessarily punitive and ineffective); Lisa Lockwood, *Where Are The Parents? Parental Criminal Responsibility For The Acts Of Children*, 30 GOLDEN GATE U. L. REV. 497 (2000) (examining how to impose liability on parents for the acts of their children); Linda A. Chapin, *Out Of Control? The Uses And Abuses Of Parental Liability Laws To Control Juvenile Delinquency In The United States*, 37 SANTA CLARA L. REV. 621 (1997) (arguing parental liability statutes are the wrong approach to curbing juvenile delinquency).

30. See Greenwood, *supra* note 29.

31. The author has found two academic articles that dedicate their theses to analyzing parental liability under retributive and utilitarian theories. See Tami Scarola, *Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding Of Justice*, 66 FORDHAM L. REV. 1029, 1033 (1997) (“[S]uch laws are unfair because the laws do not fit within the primary theories justifying criminal law.”); Brian Neill, *A Retributivist Approach To Parental Responsibility Laws*, 27 OHIO N.U. L. REV. 119, 120 (2000) (“[S]uch laws are only just when they are used to punish the misbehavior of parents, a retributivist view, and not when they are used as a mechanism to control juvenile crime, a utilitarian view.”).

32. Neill’s article, *supra* note 31, limits itself to parental responsibility statutes. Scarola’s article, *supra* note 31, also focuses only on parental responsibility statutes.

33. Andrew Morral, *Will Charging the Parents of School Shooters Help Prevent School Shootings?*, RAND (Sep. 23, 2024), <https://www.rand.org/pubs/commentary/2024/09/will-charging-the-parents-of-school-shooters-help-prevent.html> [https://perma.cc/DC76-6KXK].

34. Ilya Rudyak, *Promoting Equality Through Empirical Desert*, 7 TEX. A&M L. REV. 187, 189–90 (2019) (“Beyond their theoretical value, [utilitarian and retributivist theories]

Furthermore, since effective punishment is an important goal, and most effective when those punished “believe it is intrinsically deserved” instead of imposed upon them, we must ground reduced-offense culpability in these foundational theories.³⁵ This Note highlights the specific circumstances where retributive theory and utilitarian theory justify reduced-offense culpability.

A. Retributive Theory

Under retributive theory, punishment is justified where the offender is morally blameworthy; it is moral for an offender to suffer in proportion to his culpability.³⁶ Retributive theory is often categorized into three essential forms: assaultive retribution, protective retribution, and victim vindication.³⁷ Assaultive retribution justifies punishing a wrongdoer because “it is morally right to hate criminals.”³⁸ Victims of crime have experienced a violation of their rights, resulting in resentment towards the wrongdoer and a desire to see the wrongdoer held accountable.³⁹ Under this theory, the victim’s desire to see the wrongdoer held accountable is morally desirable because it restores the dignity of the crime victim.⁴⁰ Thus, the threshold question under assaultive retribution is whether the wrongdoer violated the victim’s rights; if the wrongdoer did violate the victim’s rights, for if so, the punishment is justified.⁴¹

Under protective retribution, punishment ensures a moral balance in society.⁴² Under this theory, moral balance is maintained when everyone follows the rules.⁴³ When someone fails to follow the rules by committing a crime, the balance is upset.⁴⁴ The offender has become a free rider who gained an unfair advantage by breaking the code of conduct (e.g., a robber

have immediate practical implications on criminal policy and the law’s precise and detailed provisions determining the distribution of criminal punishment.”).

35. Kent Greenawalt, *“Prescriptive Equality”: Two Steps Forward*, 110 HARV. L. REV. 1265, 1288 (1997) (“[P]unishment will actually work best—that is, have the most desirable consequences—if those who receive it and those who impose it alike think and feel that its justification does not depend on favorable consequences. The main idea is that punishment will be most effective if its subjects believe that it is intrinsically deserved, instead of feeling that they are being “used” to accomplish social objectives.”).

36. Russell L. Christopher, *Deterring Retributivism: The Injustice of “Just” Punishment*, 96 NW.U. L. REV. 843, 860 (2002).

37. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 17–18 (LexisNexis, 6th ed. 2012).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 17.

43. DRESSLER, *supra* note 37, at 17.

44. *Id.*

using improper threat of injury to steal from another).⁴⁵ This societal “debt” owed by the offender requires payment.⁴⁶ Under protective retribution, punishment should be inflicted so the offender is made to compensate for the unfair advantage (e.g., by imprisoning the robber to recover the gains obtained from stealing the money), thus restoring the societal balance.

A final retributive theory is victim vindication, which reasons that the offender elevates themselves above others when they commit a crime, making a “false moral claim” that they should be worth more than a crime victim.⁴⁷ By exerting control over the wrongdoer, just as the wrongdoer exerted control over the victim, punishment “reaffirms the victim’s worth.”⁴⁸ In essence, victim vindication brings the wrongdoer back to the same moral level as the victim.⁴⁹

B. Utilitarian Theory

Under utilitarian theory, punishment is justified within a social-benefit framework: if the benefits of punishment outweigh the costs of crime that would otherwise occur, punishment is justified.⁵⁰ At its core, utilitarianism involves a cost-benefit analysis of whether punishment will deter crime: “a person should be punished only if the punishment benefits society—that is, only if the punishment would help to deter future harmful conduct.”⁵¹ There are four main aspects of utilitarianism: general deterrence, specific (or individual) deterrence, incapacitation, and rehabilitation.⁵² Each considers the extent to which punishment deters future harmful conduct.⁵³

Deterrence refers to the act of punishing an individual to prevent them from committing the same crime again, and it can be split into two categories: general deterrence and specific deterrence.⁵⁴ General deterrence reasons that punishing one person convinces the general community not to commit criminal conduct in the future.⁵⁵ In other words, punishing an individual discourages people from behaving in a similar

45. *Id.*

46. *Id.*

47. *Id.* at 18.

48. *Id.*

49. DRESSLER, *supra* note 37, at 18.

50. *Id.* at 14.

51. *Utilitarian Deterrence Theory*, BLACK’S LAW DICTIONARY (12th ed. 2024).

52. DRESSLER, *supra* note 37, at 15.

53. BLACK’S LAW DICTIONARY, *supra* note 51.

54. *Id.*

55. Dressler, *supra* note 37, at 15.

way. Specific deterrence theorizes that punishment “discourage[s] the offender from committing crimes in the future; [it is] the individualized prevention of recidivism.”⁵⁶ The effectiveness of both general and specific deterrence depend on sufficient notice: for deterrence to have an effect, people must be aware that they will be punished for their wrongful action.⁵⁷ Thus, whether a punishment deters future crime requires an analysis of how people are put on notice that punishment exists; which, in turn, will be an important consideration when evaluating the appropriateness of the new parental criminal responsibility prosecutions.

Incapacitation imposes imprisonment to prevent the wrongdoer from committing additional crimes while incarcerated.⁵⁸ In evaluating whether incapacitation is appropriate, consideration must be given to the future dangerousness of the wrongdoer, which requires a focus on the nature of the offender and the offense.⁵⁹

Lastly, rehabilitation aims to reform the wrongdoer during their punishment, enabling an individual to successfully reenter society and reduce their perceived need to commit future crimes.⁶⁰ Rehabilitative programs include training on educational and life management skills, job skills training, GED programs, and personal finance courses.⁶¹

Taken together, the analysis of utilitarianism finds that punishment is justified when the benefit to society (i.e., the lower risk of future harm due to deterrence, incapacitation, and rehabilitation) outweighs the cost to society (i.e., costs in the harm of incarceration and the risk of reoffending).⁶²

III. HISTORY OF PARENTAL LIABILITY

The legal consequences of the parent-child relationship have changed over time in both the criminal and civil contexts.⁶³ Reviewing the parent-

56. *Deterrence*, BLACK’S LAW DICTIONARY (12th ed. 2024).

57. Dru Stevenson, *Toward A New Theory of Notice and Deterrence*, 26 CARDOZO L. REV. 1535, 1537 (2005) (“Deterrence should, in theory, be absolutely dependent on information, or at least on perceptions of which activities are forbidden and the attendant penalties.”).

58. Dressler, *supra* note 37, at 15.

59. William W. Bery III, *Capital Trifurcation*, 12 TEX. A&M L. REV. 129, 167–68 (2024) (“Incapacitation requires an assessment of the future dangerousness of the individual[.]”).

60. *Rehabilitation*, BLACK’S LAW DICTIONARY (12th ed. 2024).

61. Anne C. Jefferson, *Rehabilitating Prison Contracting: States Must Reclaim Prison Management and Emphasize Inmate Rehabilitation Through Utilization of Schedule Contracts for State-Run Prison Procurement*, 47 PUB. CONT. L.J. 101, 106 (2017).

62. BLACK’S LAW DICTIONARY, *supra* note 51.

63. Robert C. Paden, Jr., *Child Custody and Visitation Rights: Parents v. Grandparents*, 52 J. MO. B. 156 (1996).

child relationship in a civil context provides a helpful background for understanding similar concepts in criminal law.

A. History of Parental Civil Liability—Common Law and Statutory Law

In the civil context, at common law, the existence of a parent-child relationship did not automatically impose liability on a parent for the tortious acts of their child.⁶⁴ This was because imputing liability onto the parent violated a key principle of tort law: one should not be held liable unless that person themselves caused the injury.⁶⁵ In other words, because the child (not the parent) was the one recklessly riding the bicycle or swinging the baseball bat, the law considered the child to be the cause of the injury, not the parent.⁶⁶

Eventually, vicarious liability developed as a foundational pillar of tort law.⁶⁷ Vicarious liability allowed for a third party to be held responsible for the acts of a subordinate and was, in certain situations, applied to the parent-child relationship.⁶⁸ Generally speaking, vicarious liability in tort law aims to deter harmful conduct and provide adequate victim compensation.⁶⁹ For example, without vicarious liability, when Alex, under the supervision, direction, or care of Bob, harms Charlie, Bob might think he is absolved of responsibility because Alex directly caused the injury. In failing to hold Bob accountable, the law would not deter Bob's future behavior and may even limit Charlie's recovery. Employing vicarious liability finds Bob liable, deterring Bob from repeating his conduct and providing another party for Charlie to receive compensation. Thus, vicarious liability is able to deter harmful conduct and provide additional victim compensation.⁷⁰ Vicarious liability imposes liability on

64. 59 AM. JUR. 2D *Parent and Child* § 93 (2024).

65. Valerie D. Barton, *Reconciling the Burden: Parental Liability for the Tortious Acts of Minors*, 51 EMORY L.J. 877, 882 (2002).

66. As with all other hypotheticals, unidentified facts matter. For example, if the parents knew the child intended to recklessly ride a bicycle down the street and made no effort to lock the bicycle, then tort law may impute liability on the parents. Also, if the parents provided the bat to the child and instructed the child to swing the bat at someone else, then tort law can impute liability on the parents. Nevertheless, in a case where the parent is held liable for injuries arising from a child's action, vicarious liability is the applicable theory.

67. H. Beau Baez III, *Volunteers, Victims, and Vicarious Liability: Why Tort Law Should Recognize Altruism*, 48 U. LOUISVILLE L. REV. 221 (2009) ("Vicarious liability has been unearthed in the tort law of societies that existed more than 3000 years ago.").

68. Barton, *supra* note 65, at 881.

69. *Id.*

70. *Id.* ("Vicarious liability . . . allowed courts some flexibility to engage in a bit of social engineering when strictly applied rules of causation fail[ed] satisfactorily to meet the public policy goals for tort law of effective deterrence and victim compensation.").

a “supervisory party” (such as a parent) for the conduct of a subordinate (a child) due to an important factor: the nature of the relationship between the supervisor and the subordinate.⁷¹

At common law, vicarious liability applied to the parent-child relationship in three situations: when the parent (1) entrusted to the child a dangerous instrumentality; (2) permitted the child to act on the parent’s behalf as an agent; (3) consented to the child’s wrongdoing; or (4) failed to exercise control in a situation they knew was likely to result in injury.⁷² Parental vicarious liability was imposed for two specific reasons. First, its application in a parent-child setting made those harmed by the child’s tort more likely to receive full compensation because the parents were more likely to have financial resources than their child.⁷³ Second, the parent would be deterred from entrusting or encouraging their children to perform dangerous activities because the parent knew they could be found liable for the child’s actions in those situations.⁷⁴ Thus, common law vicarious liability in a parent-child civil context contributed to public policy goals of effective deterrence and adequate victim compensation.⁷⁵

Following in the footsteps of the common law, states developed parental liability statutes to establish civil liability in particular circumstances where a parent ought to face liability for the actions of their child.⁷⁶ As early as 1846, in Hawaii, statutory law permitted injured parties to recover from the parents of underage children in *any* situation where the child committed a tortious act.⁷⁷ Currently, statutory laws imputing liability onto parents are widespread, existing in all fifty states.⁷⁸ Virtually every state imputes liability onto the parents when a child willfully or maliciously damages property or causes injury.⁷⁹ For example, Connecticut’s statute imposes liability on parents when the child’s actions are willful or malicious.⁸⁰ Similarly, Michigan’s statute permits an injured

71. *Liability*, BLACK’S LAW DICTIONARY (12th ed. 2024).

72. *Perez v. Rodriguez*, 204 So. 3d 92, 95 (Fla. Dist. Ct. App. 2016).

73. Barton, *supra* note 65, at 882 (describing how parents are “more likely [than their children] to have the ability to compensate innocent injured plaintiffs”).

74. *Id.* at 885.

75. *Id.* at 881.

76. See HAW. REV. STAT. ANN. § 577-3 (1984) (parent liable for damage caused by tortious acts of child); MICH. COMP. LAWS § 600.2913 (1961) (parent liable for damage caused by malicious or willful acts of child).

77. HAW. REV. STAT. ANN. § 577-3 (LexisNexis 1984).

78. Kimberley L. King, Snow v. Nelson, 450 So. 2d 269 (Fla. 3d DCA 1984), 12 FLA. ST. U. L. REV. 935, 940 (1985).

79. *Parental Responsibility Laws by State*, CHARLESTON SCH. L., (Apr. 11, 2024, at 17:55 ET), <https://charlestonlaw.libguides.com/c.php?g=1226408> [<https://perma.cc/N65E-NMZE>] [hereinafter *Parental Responsibility*].

80. CONN. GEN. STAT. § 52-572 (2023).

party to recover up to \$2,500 from the parent of a child “who has maliciously or willfully destroyed . . . property . . . or who has maliciously or willfully caused bodily harm or injury to a person.”⁸¹ New Jersey’s statute imposes liability on parents for damage to school property caused by the parent’s child.⁸² This statute targets parental conduct that may permit or even encourage children to damage school property.⁸³ States differ with respect to the dollar amount of recovery, and the type of injury required.⁸⁴ Some states permit unlimited dollar recovery, while others limit the amount to \$1,000 or \$2,500.⁸⁵ More than half the states permit recovery for both property damage and personal injury, while the remainder restrict recovery to property damage.⁸⁶

Similar to common law vicarious liability, these parental liability statutes further the goals of deterring harmful conduct and providing adequate victim compensation. On one hand, parental liability statutes deter certain parental conduct by describing the type of harm a child must inflict in order for a parent to be liable.⁸⁷ On the other hand, parental liability statutes hope to provide victim compensation by permitting a party to recover financial damages from the parent.⁸⁸

B. History of Parental Criminal Culpability

Turning to the criminal context, we see that some of the motivations for imposing tort liability in the civil context are reflected in the justifications for criminal punishment. For instance, like tort law under the utilitarian theory of criminal punishment, a critical goal is effective deterrence.⁸⁹ In theory, punishing a parent for their child’s behavior deters harmful actions of the parent and decreases the chance the parent will commit a similar future crime: a parent threatened with punishment for

81. MICH. COMP. LAWS § 600.2913 (1961).

82. N.J. STAT. ANN. § 18A:37-3 (West 1967) (“The parents or guardian of any minor who shall injure any public or nonpublic school property shall be liable for damages for the amount of injury to be collected by the board of education of the district or the owner of the premises in any court of competent jurisdiction, together with costs of suit.”).

83. Board of Educ. of Piscataway Twp. v. Caffiero, 431 A.2d 799, 805 (N.J. 1981) (“The Legislature could have reasonably believed that subjecting parents to vicarious liability for their children’s willful and malicious acts of vandalism would encourage parents to exercise their ‘guiding role’ in the upbringing of their children.”).

84. *Id.*

85. See N.J. STAT. ANN. § 18A:37-3 (West 2024); MINN. STAT. ANN. § 540.18 (West 2025); MICH. COMP. LAWS § 600.2913 (2025).

86. *Parental Responsibility*, *supra* note 79.

87. See *Caffiero*, 431 A.2d at 805.

88. *Id.* at 804–05.

89. BLACK’S LAW DICTIONARY, *supra* note 51.

their child's acts will change their parenting to avoid the punishment, exercising control over their child so their child does not commit the criminal act.⁹⁰ In place of tort law's monetary incentives, parental criminal culpability employs criminal punishment, such as imprisonment, probation, or fines, as incentive for parents to exercise control over their child.⁹¹

Historically under common law in the criminal context, a parent was held culpable for the criminal acts of their child when the child's acts were committed due to "fear of, or compulsion by, the parent."⁹² The underlying concept for imputing criminal culpability on parents at common law was the principal-accomplice (accomplice) theory.⁹³ Accomplice theory imputes criminal culpability on a party who may not have directly committed the offense where that party "knowingly, voluntarily, and intentionally unites" with the offender who actually commits the crime.⁹⁴ Analogous to reasons behind vicarious liability, the rationale rests in the generally accepted criminal law principle that an accused party may be guilty of a crime where the crime is committed through an agent acting under the direction or compulsion of the accused party (i.e., a parent may be guilty of a crime where the crime is committed by a child acting under the direction of the parent).⁹⁵

For example, in a 1928 Georgia case, the court found a mother guilty as a principal for the offense of operating an automobile while under the age of sixteen.⁹⁶ In that case, the mother was present in the automobile while her thirteen-year-old son drove.⁹⁷ Under accomplice theory, the court found the mother guilty of the crime of operating an automobile while under the age of sixteen because the child drove the automobile while under the direction of his mother.⁹⁸ Similarly, in a 1920 Florida case,

90. Chapin, *supra* note 29, at 650 ("[I]f parents are punished, or threatened with punishment, they will become 'good' parents to avoid such punishment. 'Good' parents exercise appropriate 'control' over their children, and such children do not commit acts of juvenile delinquency.").

91. Michelle L. Maute, *New Jersey Takes Aim at Gun Violence by Minors: Parental Criminal Liability*, 26 RUTGERS L.J. 431 (1995).

92. Eunice Eichelberger, Annotation, *Criminal Responsibility of Parent for Act of Child*, 12 A.L.R. 4th 673 (1982).

93. See *Reeves v. State*, 143 S.E. 462 (Ga. Ct. App. 1928) (conviction of parent as principal); *Plunkett v. Heath*, 1 N.Y.S.2d 778 (1938) (conviction of parent as principal); *Commonwealth v. Slavski*, 140 N.E. 465 (Mass. 1923) (conviction of parent as principal).

94. *Accomplice*, BLACK'S LAW DICTIONARY (12th ed. 2024); MODEL PENAL CODE § 2.06 (A.L.I. 2024).

95. *Beausoliel v. United States*, 107 F.2d 292, 297 (D.C. Cir. 1939).

96. *Reeves v. State*, 143 S.E. 462 (Ga. Ct. App. 1928).

97. *Id.*

98. *Id.* (reasoning that "the defendant (the mother) knew that her son (the driver of the automobile) was under the age of 16 years, and that he was operating the automobile with

prosecutors charged a father with murder when his seventeen-year-old son killed a neighbor with his father's gun after the three got into a heated argument.⁹⁹ Although the appellate court later reversed the father's conviction on other grounds, the court considered the initial decision to charge the father proper because, under accomplice theory, the seventeen-year-old son acted under his father's direction.¹⁰⁰

Eventually, as with parental civil liability, statutory criminal laws came into the fray, providing additional avenues to find parents criminally culpable when their child committed an offense. Most well-known are the aforementioned "contributing to the delinquency of a minor" (CDM) statutes.¹⁰¹ As early as 1903, states passed CDM statutes that punished parents who caused or contributed to a child's commission of an unlawful act.¹⁰² Some CDM statutes specify the offense the child must commit (such as larceny or vandalism) for the parent to be criminally culpable, but, similar to the generally-worded statutes, they allow for prosecutors to charge a parent with a crime after their child commits an offense.¹⁰³ Relevant to this Note, the Michigan CDM statute reads: "Any person who shall by any act, or by any word, encourage, contribute toward, cause or tend to cause any minor child under the age of 17 years to become . . . delinquent . . . shall be guilty of a misdemeanor."¹⁰⁴

Lesser-known statutes that impose criminal culpability on parents take two forms: (1) safe-storage laws and (2) compulsory juvenile care fees. Safe-storage laws punish a parent when their firearm is left unattended or unsecured and their child accesses the firearm.¹⁰⁵ In Michigan, if a parent fails to secure their firearm and the child obtains the firearm, the parent can face a misdemeanor punishable by up to ninety-three days in jail.¹⁰⁶ Compulsory juvenile care fees require the parent to pay a fee to the State

her knowledge, consent, and approval[.]" so "she was aiding and abetting in [her son's offense], and her conviction as a principal" was appropriate).

99. *Kelley v. State*, 83 So. 909 (Fla. 1920), *rev'd on other grounds*, 83 So. 909 (Fla. 1920).

100. *Id.* at 911. ("[A]n unlawful act committed by a child in the presence of his father, at his direction, because of the criminal intent of the father, and not because of the wrong of the child, is the crime of the father, and not of the child.")

101. Pamela K. Graham, *Parental Responsibility Laws: Let the Punishment Fit the Crime*, 33 *LOY. L.A. L. REV.* 1719, 1731, 1733 (2000) ("The most common criminal liability statutes involve penalties for 'contributing to the delinquency of a minor' (CDM) or 'endangering the welfare' of a child.")

102. *Id.* at 1731.

103. *FLA. STAT. ANN.* § 784.05 (West 1997) (subjecting parents to misdemeanor charges if their child exposes someone to personal injury); *CAL. PENAL CODE* § 272 (West 2006) (exposing parents to misdemeanor charges if their child violates felony law).

104. *MICH. COMP. LAWS* § 750.145 (1961).

105. *MICH. COMP. LAWS* § 28.429 (2024).

106. *Id.*

when their child is under State supervision or detention.¹⁰⁷ For example, the Florida statute requires parents to pay to the State one dollar for each day their child is on probation and five dollars for each day their child is incarcerated with failure to pay constituting contempt of court.¹⁰⁸

Parental culpability statutes differ from parental culpability at common law in a few notable ways. Under common law, parental criminal culpability based on accomplice theory resulted in the parent being charged with the same crime as the child allegedly committed.¹⁰⁹ Thus, the parent's offense was similar to, and closely linked with, the child's offense, and both the parent and child faced the same level of criminal culpability. On the other hand, under CDM statutes, parental criminal culpability charges a parent with a misdemeanor for contributing to the delinquency of a minor, a less serious crime than that faced by the child.¹¹⁰ The parent's offense is a distinct, separate offense that is less reflective of the child's offense. The same holds true for safe-storage laws and compulsory juvenile care fees: the parent's offense is a separate offense much less reflective of the child's offense.¹¹¹ As a result, the parent may face a lesser degree of criminal culpability than the child.

To conceptualize the situation, imagine, on a continuum the range of criminal culpability a parent faces as a result of their child's criminal act. At the most extreme end of the continuum would be the highest form of criminal culpability: charging the parent as an accomplice with the same level of crime as the child's felony offense. On the other end is a much lower form of criminal culpability: charging the parent with a misdemeanor under a CDM statute. Between these two extremes sits reduced-offense culpability, an emerging form of parental criminal culpability where the parent's level of culpability is greater than under a CDM statute but less than under accomplice theory.

107. FLA. STAT. ANN. § 985.039 (West 1997).

108. *Id.*

109. *See* Part III.

110. *See* MICH. COMP. LAWS § 750.145 (1961).

111. In a hypothetical where a child obtains an unsecured weapon belonging to their parent and kills someone, the child may be charged with murder. *See* MICH. COMP. LAWS § 750.316 (1961) (first-degree murder). Under safe-storage laws, the parent is guilty of failing to adequately secure a weapon. *See* MICH. COMP. LAWS § 28.429 (2024). Under compulsory juvenile care fees, the parent must pay detention fees. *See* FLA. STAT. ANN. § 985.039 (West 1997).

C. New Form of Parental Criminal Culpability: Reduced-Offense Culpability

Under reduced-offense culpability, the parent faces a charge for an offense that is related to, but one or two degrees lower than, the child's offense, depending on the extent of the parent's participation.¹¹² For example, if the child faces a first-degree murder for killing another person charge, the parent might face a manslaughter charge; if the child faces a second-degree murder charge, the parent might face a reckless conduct that resulted in death charge. On the range of criminal culpability a parent faces as a result of their child's criminal act, reduced-offense culpability lies between that faced under CDM statutes and that faced under accomplice theory. Importantly, in pursuing reduced-offense culpability, a prosecutor is not restricted to homicide cases; reduced-offense culpability can exist in any context where prosecutors can charge the parent with an offense at least one degree lower than the child's.¹¹³

D. An Example: The Oxford Case

There are few highly publicized instances where prosecutors have pursued reduced-offense culpability in the parent-child context.¹¹⁴ The Oxford case is one.¹¹⁵

A detailed understanding of the facts of this case is critical in assessing the extent to which parental liability has been applied. In March 2021, Jennifer and James Crumbley, the parents of fifteen-year-old Ethan Crumbley, began to receive a series of text messages from Ethan indicating he was suffering from paranoia and hallucinations.¹¹⁶ In April 2021, Jennifer and James ignored Ethan's text request for medical help,

112. See generally Lauren Mascarenhas, *Father of Highland Park Shooting Suspect Pleads Guilty to Misdemeanor Reckless Conduct Charges in Deal with Prosecutors*, CNN (Nov. 6, 2023, at 16:57 ET), <https://www.cnn.com/2023/11/06/us/robert-crimo-highland-park-shooting> [<https://perma.cc/J8YD-U9AX>] (reporting that a mother was convicted of a child neglect statute after her son shot his teacher; father pleaded guilty to reckless conduct after son shot seven people; father found guilty of illegal delivery of a firearm after son killed four people; father convicted of federal illegal firearms possession charges after son killed four students; each sentenced to two years or less).

113. MICH. COMP. LAWS § 750.72 (1961) (first, second, third, and fourth degree arson).

114. Mascarenhas, *supra* note 112 (“Even in these more egregious cases [where a child commits a crime and the parent was involved], it’s a heavy lift for prosecutors to [hold the parents accountable], but they now seem more willing to try.”).

115. Amelia Buragas, *Who’s To Blame?*, 112 ILL. B.J. 10, 11 (2024) (commenting on how the Oxford case “garnered widespread press coverage”).

116. *People v. Crumbley*, 11 N.W.3d 576, 580–81 (Mich. Ct. App. 2023).

telling him to “suck it up.”¹¹⁷ In the months that followed, Ethan spoke to a friend about his mental health issues, sometimes speaking about purchasing a gun, but the communication had ceased by October 2021, around the time when Ethan’s family dog and grandparent died.¹¹⁸ On November 26, 2021, Ethan went to a gun shop with James and purchased a nine-millimeter handgun.¹¹⁹ In a social media post, Jennifer indicated the gun was an early Christmas gift for Ethan, and Ethan posted to social media two photographs of his new gun.¹²⁰

The following day, November 27, Jennifer took Ethan to a shooting range to practice with the gun.¹²¹ Two days later, on Monday, November 29, a teacher caught Ethan searching the internet on his cell phone for handgun ammunition.¹²² The school contacted his parents and left a voicemail, but his parents never returned the call.¹²³ Later that day, Jennifer texted Ethan about receiving the voicemail, urging him “not to get caught” searching the internet for handgun ammunition while in school.¹²⁴

The next morning, Ethan went to school with his handgun in his backpack.¹²⁵ His English teacher caught him watching a shooting video on his cell phone and his math teacher discovered a worksheet with scribbled drawings of blood, a bullet, and a gun.¹²⁶ A teacher escorted Ethan to the school office while school officials performed a risk assessment on him and contacted Jennifer and James.¹²⁷ At around 10:40 a.m., both parents arrived and school officials urged the parents to immediately take their child to a doctor or therapist.¹²⁸ The parents indicated they had to return to work and because Ethan had not committed an action requiring him to leave school, he remained there.¹²⁹

At approximately 12:45 p.m., Ethan went into the bathroom with his backpack and removed the gun.¹³⁰ He then went on a shooting spree,

117. *Id.* at 581.

118. *Id.* at 581–82.

119. *Id.* at 582.

120. *Id.* at 582–83.

121. *Id.* at 582.

122. *Crumbley*, 11 N.W.3d at 583.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 583–84.

127. *Id.* at 585.

128. *Crumbley*, 11 N.W.3d at 586.

129. *Id.*

130. *Id.* at 587.

ultimately murdering four students and injuring six other students and one teacher.¹³¹ The shooting ended by 12:58 p.m.¹³²

Under Michigan law, homicide has three main categories: first-degree murder, second-degree murder, and manslaughter.¹³³ Manslaughter is split into two categories: voluntary and involuntary manslaughter.¹³⁴ Ethan was charged with first-degree murder, which requires a showing of premeditation and deliberation.¹³⁵ With respect to the parents, the prosecution had a few options.

First, the prosecution could have employed accomplice theory under which the parents would have faced the same first-degree murder charges as their child.¹³⁶ As noted above, accomplice theory applies where a child acted at the direction of their parent, so the criminal intent of the parent is the one required for the criminal act of the child.¹³⁷ For example, if a parent directed their child to burn a building, and the child did so, then the parent would have the malicious intent required for arson. Under accomplice theory, convicting the parents of first-degree murder might have been a difficult task because it would require proving that the parents intended for their child to use the handgun to harm his classmates with premeditation and deliberation.¹³⁸ The facts surrounding the Oxford shooting don't seem to support such a blatant intent.¹³⁹ Additionally, research indicates that jurors are less likely to convict parents of an offense as serious as first-degree murder when the murders occurred at the hands

131. *Id.*

132. *Id.*

133. See MICH. COMP. LAWS § 750.316 (1961) (first-degree murder); MICH. COMP. LAWS § 750.317 (1961) (second-degree murder); MICH. COMP. LAWS § 750.321 (1961) (manslaughter).

134. Fred T. Harring, *The Misdemeanor-Manslaughter Rule: Dangerously Alive in Michigan*, 42 WAYNE L. REV. 2149, 2154 (1996) (“Common law manslaughter in Michigan has two general categories: voluntary and involuntary manslaughter.”).

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

136. Michigan law abolished the distinction between principal and accomplice, but an accomplice must still aid or abet (i.e., take some action). See MICH. COMP. LAWS § 767.39 (1961) (“Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.”).

137. Eichelberger, *supra* note 92 (“[C]ourts have imposed criminal responsibility on parents for the criminal acts of their children when it has been shown that the acts of the child were done under fear of, or compulsion by, the parent.”).

138. MICH. COMP. LAWS § 750.316(1)(a) (1991) (“Murder perpetrated by means of . . . deliberate, and premeditated killing.”).

139. See Section III.D.

of their child.¹⁴⁰ Alternatively, prosecutors could have charged the parents under Michigan's CDM statute, a misdemeanor carrying a maximum punishment of one year in jail,¹⁴¹ a course that may have seemed very lenient considering the horrific result.

The prosecution chose neither of these avenues. Instead, the prosecution charged Jennifer and James with involuntary manslaughter, a related crime two degrees lower than Ethan's first-degree murder charge, thus employing reduced-offense culpability.¹⁴² Under this involuntary manslaughter charge, the prosecution must prove (1) that the defendant caused the death of the victim and (2) that in doing the act, the defendant acted in a grossly negligent manner.¹⁴³ Under Michigan law, a defendant is grossly negligent when (1) the defendant knew of the danger to another; (2) the defendant could have avoided the injury by using ordinary care; and (3) the defendant failed to use ordinary care when it was apparent to a reasonable person that the result was likely to be a serious injury.¹⁴⁴ Applied in the Oxford case, the prosecution alleged that the parents' act that caused the victims' deaths was the parents' "willful ignorance of risks that a future harm would occur, the risks being [their child's] behavior leading up to the crime and the future harm being the ultimate deaths of the victims."¹⁴⁵ In other words, the prosecution alleged that the way the parents handled raising their child caused the deaths of four people. Oakland County Prosecutor Karen McDonald, who led the prosecution of Ethan and his parents, provided a glimpse into the reasoning behind that decision, emphasizing "that we all know we have a responsibility to act and use ordinary care, particularly with a deadly weapon and minor."¹⁴⁶ In

140. Jean Peters-Baker, *Punishing the Passive Parent: Ending A Cycle of Violence*, 65 UMKC L. Rev. 1003, 1017 (1997) (explaining how a jury may be unwilling to convict a parent for manslaughter based on an omission and jurors and the general public are reluctant to punish a parent for failing to act); *see also* Lockwood, *supra* note 29, at 547 (explaining that society is reluctant to hold parents criminally liable because (1) "parental criminal liability judges parental ability and interferes with a person's right to parent"; (2) "parents may identify with the difficulties that other parents face"; and (3) people may believe the "parents of the perpetrators have already been punished enough").

141. MICH. COMP. LAWS § 750.145 (1961) ("... shall be guilty of a misdemeanor.").

142. *See* MICH. COMP. LAWS § 750.321 (1991) (expressing that manslaughter carries a maximum penalty of fifteen years); MICH. COMP. LAWS § 750.316 (1991) (penalizing murder with a risk of life imprisonment). CDM is a misdemeanor, and Michigan misdemeanors carry a maximum punishment of one year in prison. § 750.145.

143. Haring, *supra* note 134.

144. *Id.*

145. Jolie Bodner Zangari, *An Unprecedented Verdict: Expanding Parental Liability for Children's Violent Crimes*, 39 CRIM. JUST. 7, 8 (2024).

146. Karry Breen, *Michigan Prosecutor on Why She Embarked on Landmark Trials of School Shooter's Parents*, CBS (Mar. 15, 2024, at 10:00 ET),

the prosecution's eyes, the parents deserved to be held significantly accountable for their actions.

Ultimately, prosecutors were successful in convicting the parents on all four manslaughter charges.¹⁴⁷ This conviction may pave the way for future prosecutions of reduced-offense charges. For example, in the aforementioned Georgia case, the school shooter faced first-degree murder charges, and the State of Georgia charged Colin Gray, the parent, with lesser charges, including involuntary manslaughter.¹⁴⁸ Like Michigan, Georgia has a CDM statute, but prosecutors opted for a more severe charge and punishment.¹⁴⁹ The Oxford and Georgia cases suggest that this type of reduced-offense culpability might become more widespread.¹⁵⁰ The next section will analyze whether this type of charging is justified under the theories of punishment.

IV. APPLICATION OF THEORIES OF PUNISHMENT TO THE OXFORD CASE

Retributive theory justifies reduced-offense culpability only when there exists a causal link between the parents' actions or inactions and the child's criminal act.¹⁵¹ In the Oxford case, a causal link existed between the parents' actions and the child's criminal act, and thus retributive theory justified their punishment.¹⁵² Also, as discussed below, in this particular circumstance, utilitarian theory justifies reduced-offense culpability given the benefits of general deterrence, though the analysis might change if the circumstances were different.

<https://www.cbsnews.com/news/jennifer-james-crumbley-convicted-oxford-high-school-shooting-parents-prosecutor/> [<https://perma.cc/Z94A-JJGU>].

147. *Id.*

148. Some facts in the Apalachee case overlap with those in the Oxford case. For example, the father of the Georgia school shooter also purchased the gun as a present for his child despite warning signs. Darnell, *supra* note 3 (“Colin Gray told investigators he purchased the gun as a Christmas present for his son last year.”).

149. The CDM statute provides that the maximum punishment is one year. *See* GA. CODE § 16-12-1 (2014) (reading that maximum punishment is one year in prison). The child is charged with murder and could face life in prison. *See* GA. CODE ANN. § 16-5-1 (2023) (expressing that maximum punishment is death or imprisonment for life). In contrast, if the father in the Apalachee case is convicted his offenses (involuntary manslaughter, two counts of second-degree murder and eight counts of cruelty to children), he faces up to 180 years of prison.

150. Mascarenhas, *supra* note 112.

151. DRESSLER, *supra* note 37.

152. *See* Section III.A.

A. Retributive Theory and Reduced-Offense Culpability

Punishment under the three main forms of retributive theory (assaultive retributivism, protective retributivism, and victim vindication) require the wrongdoer to make a conscious choice to commit some wrong, as the underlying idea of retributivism is that an offender is morally blameworthy because they harmed society.¹⁵³ Under assaultive retributivism, an offender violates the victim's rights; under protective retributivism, an offender gains some unfair advantage; and under victim vindication, an offender morally elevates himself with respect to others.¹⁵⁴ Therefore, under retributive theory, to justify reduced-offense culpability, the parent must have violated a victim's rights, gained some unfair advantage, or morally elevated himself with respect to others, or a combination of these things.

1. Assaultive Retributivism: Violation of Victim's Rights

When a child commits a criminal act against another person, such as an assault, the victim's right to bodily integrity is violated.¹⁵⁵ In the Oxford case, Ethan murdered the victims by shooting them, thus violating their rights to bodily integrity.¹⁵⁶ However, James and Jennifer purchased his handgun, failed to provide him with mental health resources, and repeatedly ignored his requests for help.¹⁵⁷ Therefore, the question becomes, did these parents also violate the victims' rights to bodily integrity through their actions or inactions?

For these parents to have violated the victims' rights to bodily integrity, there must exist a causal link between the parents' behavior and the violation of the victims' bodies.¹⁵⁸ In criminal law, there are two requirements for causation: cause in fact and proximate cause.¹⁵⁹ Cause in

153. DRESSLER, *supra* note 37, at 12 (“Because the criminal has harmed society, it is right to ‘hurt him back.’”).

154. Meghan J. Ryan, *Proximate Retribution*, 48 HOUS. L. REV. 1049, 1060 (2012) (speaking to the three predominate retributivist theories).

155. Erin Daly, *Women's Dignity, Women's Prisons: Combatting Sexual Abuse in America's Prisons*, 26 CUNY L. REV. 260, 305 (2023) (“Violations of a person's bodily integrity violate their dignity because every individual has the right to self-determination against nonconsensual or harmful activity to their body.”).

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

157. *Id.*

158. *Id.* at 587–88 (describing how the prosecutor's theory required parents to have sufficiently caused involuntary manslaughter).

159. Rory Bahadur, *Almost A Century and Three Restatements After Green It's Time to Admit and Remedy the Nonsense of Negligence*, 38 N. KY. L. REV. 61, 71 (2011)

fact asks whether the harm would have occurred but-for the defendant's actions; proximate cause asks whether the harm was a foreseeable result of the defendant's actions.¹⁶⁰ In the Oxford case, by convicting the parents, the jury necessarily found that both cause in fact and proximate cause existed.¹⁶¹ Cause in fact existed because the handgun would not have been in the Ethan's possession but-for his parents' purchase of the gun.¹⁶² Proximate cause also existed because the parents should have foreseen the future harm of their behavior.¹⁶³ To elaborate, the parents received numerous requests from their child indicating he was mentally unstable, yet they purchased a handgun for him anyway.¹⁶⁴ Three days later, he murdered four of his peers.¹⁶⁵ Given the warning signs and the closeness in time between the handgun purchase and the murders, proximate cause could be found.¹⁶⁶ Consequently, the parents' behavior can be causally linked to the violation of the victims' bodies, which means that these parents violated the victims' rights to bodily integrity. Because the parents violated the victims' rights, the punishment of the parents in the Oxford case is justified under assaultive retributivism. Other cases that employ reduced-offense culpability may come out differently because causation involves a fact-specific analysis that finds punishment for a parent in a reduced-offense form is appropriate only when the parents can be causally linked to the violation of a victim's rights.¹⁶⁷

2. Protective Retributivism: Gain of an Unfair Advantage

The underlying principle of protective retributivism is that an offender gains an unfair advantage when he frees himself from the burdens of the

("Causation in negligence is actually a combination of two elements, cause-in-fact and proximate cause.").

160. *Id.*

161. *Crumbley*, 11 N.W.3d at 587–88.

162. *Id.*

163. *Id.*

164. *Id.* at 586.

165. *Id.* at 587.

166. *Id.* at 594 ("Defendant [parents'] actions and inactions were inexorably intertwined with [their child's] actions, i.e., with the intervening cause. This connection exists not simply because of the parent-child relationship but also because of the facts showing that defendants were actively involved in [their child's] mental state remaining untreated, that they provided him with the weapon used to kill the victims, and that they refused to remove him from the situation that led directly to the shootings.").

167. *Crumbley*, 11 N.W.3d at 594 ("We simply hold that with these unique facts, and in this procedural posture and applicable standard of review, this case falls outside the general rule regarding intentional acts . . .").

law yet still enjoys the benefits of a stable society.¹⁶⁸ Parents have a duty under the law to support, raise, and provide for their children.¹⁶⁹ Parenting obligations include maintaining the child's health and education, providing adequate food, clothing, and medical care, and supplying adequate living quarters.¹⁷⁰ Accordingly, parents must spend time and resources on raising their children.¹⁷¹ Whether a parent gained an unfair advantage requires considering two facts: the level of available resources to the parent and the parent's allocation of those available resources.¹⁷² The ultimate question is whether the parents allocated the resources available to them in a way that satisfied their duty to provide proper care. For example, a parent unfairly frees themselves from the duty to support their child when the parent gambles with money originally meant to purchase food for the child, and the child goes hungry as a result. In that situation, the parent has sufficient resources to purchase food for their child, but the parent improperly allocated the child's food resources towards the parent's gambling.

Importantly, framing the analysis this way avoids situations where low-income families may be punished for failing to discharge some parenting obligation. For example, if a parent does not provide adequate food for their child, protective retributivism does not justify punishment of that parent unless the parent could have provided adequate food and

168. Ryan, *supra* note 154, at 1060 ("Society is built on rules that, for the benefit of the community, forbid certain harmful conduct. Each of these rules imposes burdens on members of the community, and by committing a crime, the offender enjoys the benefits of a stable society but frees himself of the burdens of following the law.").

169. Peters-Baker, *supra* note 140, at 1010 ("A common law duty to render aid is imposed on a parent or legal guardian to support his or her child."); *see also* State v. Walden, 293 S.E.2d 780, 785 (S.C. 1982) ("Parents . . . have an affirmative legal duty to protect and provide for their minor children."); Dunbar v. Dunbar, 190 U.S. 340, 351 (1903) ("At common law, a father is bound to support his legitimate children, and the obligation continues during their minority. We may assume this obligation to exist in all the states."); Comment, *Extent of A Parent's Duty of Support*, 32 YALE L.J. 825, 828 (1923) ("The parent by bringing a child into the world has brought upon himself the obligation of providing for that child.").

170. *In re Adoption of Lybbert*, 453 P.2d 650, 652-53 (Wash. 1969) ("The commonly understood general obligations of parenthood entail these minimum attributes: (1) express love and affection for the child; (2) express personal concern over the health, education and general well-being of the child; (3) the duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; and (5) the duty to furnish social and religious guidance.").

171. Willfully choosing not to do so may constitute abandonment. *See Lybbert*, 453 P.2d at 652 ("[A]bandonment on the part of a parent to have been established when the circumstances show a 'willful substantial lack of regard for parental obligations.'").

172. This analysis is of the author's creation and applicable to reduced-offense culpability cases. Whether protective retributivism justifies other forms of punishment may require a consideration of additional facts.

chose not to, spending the money on something unneeded. Meeting basic parenting obligations such as providing adequate food is challenging for many families: one in eight U.S. households with children cannot buy enough food for their family.¹⁷³ Furthermore, nearly 50 million Americans live in poverty, which includes roughly 15 million children.¹⁷⁴ Yet, child raising expenditures can be costly: in the United States in 2025, the average price of raising a child is around \$18,761 per year.¹⁷⁵ Parents living in poverty struggle to meet their basic parenting obligations like providing adequate food, housing, and clothing.¹⁷⁶ They may live in areas that make it difficult to supply their child with adequate education due to under-resourced and overcrowded schools.¹⁷⁷ When the children of parents living in poverty commit crimes, parents' punishment should not be justified under protective retributivism unless the parents' allocation of resources was improper. As applied to the Oxford case, then, we must consider the resources available to the parents and whether the parents allocated those resources in the proper way to care for their child.

In the Oxford case, the parents seemed to be fairly well-resourced: both parents were employed during the months when their child's mental state was in decline, as Jennifer worked as a marketing director at a real estate company,¹⁷⁸ and James worked as a delivery driver.¹⁷⁹ They had sufficient resources to purchase him Christmas gifts and take him to a gun range.¹⁸⁰ The question then becomes whether they allocated their available resources in a way that satisfies their parenting obligations.

173. *Mental Health Effects of Poverty, Hunger, and Homelessness on Children and Teens*, AM. PSYCH. ASS'N (May 2024), <https://www.apa.org/topics/socioeconomic-status/poverty-hunger-homelessness-children> [<https://perma.cc/QV3E-M44Z>].

174. *Today's Low-Income America*, LEGAL SERVS. CORP. (2025), <https://justicegap.lsc.gov/resource/section-2-todays-low-income-america/> [<https://perma.cc/D3B7-MVJV>].

175. Brad Hanson, *How Much Does it Cost to Raise a Child in 2024? Things for Prospective Parents to Consider*, CREDIT KARMA (June 27, 2024), <https://www.creditkarma.com/cash-flow/i/how-much-does-it-cost-to-raise-a-child> [<https://perma.cc/D7ZV-Q49D>].

176. AM. PSYCH. ASS'N, *supra* note 173.

177. *Id.*

178. Mark Morales, *Mother Of Michigan School Shooting Suspect Pleaded To Keep Her Job Shortly After The Shooting, Boss Says*, CNN (Feb. 8, 2022, at 22:31 ET), <https://www.cnn.com/2022/02/08/us/michigan-school-shooting-crumbley-court> [<https://perma.cc/TRX3-N2K3>].

179. Selina Guevara, *James Crumbley, Father Of Ethan Crumbley, Found Guilty Of Involuntary Manslaughter In Son's School Shooting*, NBC (Mar. 14, 2024, at 19:02 ET), <https://www.nbcnews.com/news/us-news/verdict-james-crumbley-involuntary-manslaughter-trial-rcna143174> [<https://perma.cc/MQ64-XC8X>].

180. *See* Part II.

Here, the Oxford parents (like all parents) had an obligation to maintain the health of their child and to provide adequate medical care.¹⁸¹ Yet, the Oxford parents did not allocate their resources in a way to satisfy this burden.¹⁸² On several occasions, the parents refused to provide counseling or medical aid to their child, despite his requests for help.¹⁸³ The parents saved time and money in not seeking medical aid for their child, even though these costs may have been substantial, considering the average annual cost of treating people with self-reported mental health problems is \$7,564.¹⁸⁴ Thus, under protective retributivism, the parents did not allocate their resources in a way that satisfied their parenting obligations thereby justifying their punishment.

Overall, justifying punishment of a parent under protective retributivism in a parent-child criminal case requires considering two facts. First, consideration must be given to the extent of the parent's resources and, next, whether the parents sufficiently allocated those resources to properly care for their child. When a parent struggles to provide for their child due to poverty, protective retributivism does not justify punishment unless the parent improperly allocates their available resources. To be clear, parenting obligations include expenses the law requires the parent to pay, such as housing and medical care.¹⁸⁵ In the Oxford case, the parents had sufficient resources to provide for their child,¹⁸⁶ but did not properly allocate those resources.¹⁸⁷ Thus, they saved money by not providing their child with needed medical care, and protective retributivism justifies punishment of Jennifer and James Crumbley.

3. *Victim Vindication: Moral Elevation of Offender Rights*

Victim vindication aims to correct the offender's false belief that, in committing a criminal act, the offender's rights are more valuable than

181. *In re Adoption of Lybbert*, 453 P.2d 650, 652–53 (Wash. 1969).

182. *People v. Crumbley*, 11 N.W.3d 576, 593–94 (Mich. Ct. App. 2023) (finding that the parents did not treat their child's mental state).

183. *Id.*

184. B.G. Druss, *Patterns Of Health Care Costs Associated with Depression and Substance Abuse in a National Sample*, PSYCHIATRIC SERV. (Feb. 1999), <https://pubmed.ncbi.nlm.nih.gov/10030479/> [<https://perma.cc/E6E3-WWRG>].

185. *Lybbert*, 453 P.2d at 652–53.

186. *See* Morales, *supra* note 178; Guevara, *supra* note 179 (discussing the parents employment at the time of shooting).

187. *Crumbley*, 11 N.W.3d at 594 (“[The] defendants were actively involved in [their child's] mental state remaining untreated . . .”).

society's rights.¹⁸⁸ Key to this theory is that the offender must have committed a wrong that communicates to the victim and society that the offender's rights are more valuable.¹⁸⁹ If the offender's offense does not communicate to the victim and society that the offender's rights are more valuable, then victim vindication does not justify punishment.¹⁹⁰ In the context of reduced-offense culpability, the question becomes whether the parents have committed an offense that communicates to the victim and society that the parents' rights are more valuable.

In charging a parent with criminal culpability arising from the acts of their child, the wrong the parent commits is the failure of the parent to recognize the risks their child poses to others.¹⁹¹ Through the way a parent raises their child, a parent sees the potential risks their child poses to others.¹⁹² For example, an attentive parent who frequently checks in on their child is more aware of their child's mental state than an inattentive parent. If the child's mental state deteriorates, then the attentive parent likely recognizes the risk their child poses to others, while the inattentive parent may not. Each day of a child's life, parents consciously make decisions about how they are raising their child, including the level of supervision over a child, the degree of freedom the child has, and the extent of affection and care the parent provides.¹⁹³ If the way the parents exercise their right to raise their child results in the parent failing to recognize the risks their child poses to others, then the parents may be elevating their right to parent over other's right to be free from the child's risk (i.e., others' right to bodily integrity, to be free from harmful intrusions).

One way a parent can fail to recognize the risk their child posed to others is if the child exhibited warning signs the parent overlooked.¹⁹⁴ For example, did the parent know and disregard the fact that their child was being bullied, using drugs or alcohol, or had an unhealthy obsession with

188. Ryan, *supra* note 154, at 1060 ("Through punishing the offender, society corrects the offender's unfounded statement and reaffirms the victim's worth, thus restoring the balance to the individuals' dignities.").

189. *Id.* ("The offender has committed a wrong through his offense, which sent a message to the victim and all of society that the offender's rights are more valuable than the victim's rights.").

190. *See id.*

191. For example, in the Oxford cases, the charges were based on the parent's willful ignorance that the harm would occur. *Crumbley*, 11 N.W.3d at 588.

192. Cynthia Frosch et al., *Parenting and Child Development: A Relational Health Perspective*, AM. J. LIFESTYLE MED. (May 2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7781063/> [<https://perma.cc/D8P4-8XQX>].

193. *Id.*

194. *See* Mark Singer et al., *Contributors to Violent Behavior Among Elementary and Middle School Children*, 104 PEDIATRICS 878 (1999).

firearms?¹⁹⁵ If the parent knew of these warning signs and chose to ignore them, then the way in which this parent exercises their right to parent exposes others to risk. The parent is choosing to parent in an inattentive way, despite the risk of harm their child poses to others. In exposing others to the risk of harm, the parent elevates their right to parent over others' right to bodily integrity.

Like all parents, Jennifer and James made conscious decisions in how they were parenting Ethan. In doing so, they made important choices: they heard Ethan's requests for mental health treatment and ignored them; they knew Ethan had researched weapons at school yet proceeded to purchase him a gun; and they saw Ethan's violent drawings but refused to take him to therapy.¹⁹⁶ Ethan exhibited several warning signs that he posed a risk to others,¹⁹⁷ and Jennifer and James exercised their right to parent by ignoring those warning signs. Indeed, the prosecution alleged that the Crumbleys committed manslaughter by their "willful ignorance of risks that a future harm would occur."¹⁹⁸ Because the Crumbleys' parenting decisions ignored the risks their child posed, they elevated their right to parent over others' right to be free from their child's harm. Thus, victim vindication justifies punishment of the Oxford parents.

4. Retributive Theory Conclusions

Assaultive retributivism, protective retributivism, and victim vindication justify punishment of the Oxford parents. Generally, when there is a causal link between the parents' actions and the child's criminal act, assaultive retributivism justifies punishment by charging the parent with reduced-offense culpability.¹⁹⁹ Protective retributivism justifies punishing a parent under reduced-offense culpability when a parent improperly allocates the resources available to them so as to not fulfill their parenting obligations.²⁰⁰ Lastly, victim vindication justifies reduced-offense culpability when the parents' actions express a false belief that the parents' right to raise their child is more valuable than others' right to bodily integrity.²⁰¹ This may be the case when the parent sees warning signs that their child is a risk to others and chooses to disregard them.

195. *Id.*

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

197. *See Singer et al.*, *supra* note 194.

198. *Zangari*, *supra* note 145, at 8.

199. *See supra* Part II.

200. *See supra* Part II.

201. *See supra* Part II.

B. Utilitarian Theory and Reduced-Offense Culpability

Analyzing the four main aspects of utilitarianism (general deterrence, specific deterrence, incapacitation, and rehabilitation) in a reduced-offense culpability charge reveals that the cost of punishing parents may outweigh societal benefits. In the Oxford case, the benefits of deterrence outweigh the costs of incapacitation and rehabilitation, and therefore utilitarianism justifies punishment.

1. Deterrence

For punishment to have a deterrent effect, members of society must be on notice that one may be punished for a particular wrongful action.²⁰² Thus, for reduced-offense culpability to have a deterrent effect, people must be aware that sufficiently contributing to a child's criminal act may result in the child's parents facing criminal charges too. For example, CDM statutes provide notice to parents that they will be partly responsible for their child's actions in certain situations because the statutes contain language explicitly separating the responsibilities of the "parent" and "child."²⁰³ Statutes incorporating accomplice liability provide sufficient notice to parents that they will be responsible for their child's actions because the parent is understood to have the same criminal intent as the child.²⁰⁴ Because the parent is treated as if they had committed the principal offense themselves, the parent is aware of the criminal conduct for which they can be held accountable.²⁰⁵

Under reduced-offense culpability, however, it is not immediately clear parents are put on notice that they may face lesser charges if their child commits a criminal act because reduced-offense culpability charges parents with generally worded statutes that do not contain the distinct words "parent" and "child."²⁰⁶ For example, the prosecution charged the Oxford parents with manslaughter, a charge that is distinct from, but derivative of, their child's first-degree murder charge.²⁰⁷ Neither Michigan's first-degree murder nor manslaughter statutes indicate that a

202. Stevenson, *supra* note 57, at 1537.

203. CAL. PENAL CODE § 272 (West 2006) ("[A] parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.").

204. John Decker, *The Mental State Requirement for Accomplice Liability in American Criminal Law*, 60 S.C. L. REV. 237, 300 (2008) (describing how principal and accomplices share the same mental state under principal-accomplice theory).

205. *Id.*

206. Peters-Baker, *supra* note 140, at 1017.

207. *People v. Crumbley*, 11 N.W.3d 576, 579 (Mich. Ct. App. 2023).

parent may be held separately liable for manslaughter if their child commits murder.²⁰⁸ For the Oxford parents to have been on notice of the potential manslaughter charges, they must have perceived that their conduct (“willful ignorance” of their son’s requests for help, purchasing of the gun, and practicing at the shooting range) was forbidden.²⁰⁹ Given this was the first case in which parents were charged with manslaughter after their child committed a school shooting,²¹⁰ the Oxford parents likely did not perceive that their conduct would expose them to specific criminal culpability they ultimately faced. This would suggest that the Oxford parents should not be punished for their conduct because they were not on proper notice.

However, not prosecuting the parents might have several negative results. First, it runs counter to a fundamental legal principle that all people are responsible for knowing the law.²¹¹ It was conceivable, even simply under existing accomplice theory, that a parent could be held liable for the actions of their child.²¹² So, while reduced-offense culpability might be a new theory, holding parents accountable is not. Second, choosing not to prosecute the parents might set the precedent that a parent will not be punished under reduced-offense culpability in this type of situation. This runs counter to the purpose of general deterrence. General deterrence is the use of punishing one person to convince others to not commit similar criminal conduct.²¹³ Others are deterred from engaging in parental conduct giving rise to reduced-offense culpability when they know how a parent’s conduct violated the law and see the severity of the punishment.²¹⁴ When others know what conduct was punished, they know not to engage in that sort of conduct. Widespread knowledge of the Oxford case and the precedent it sets will bolster the likelihood that parents are on notice that they may be charged with a reduced-offense when their child commits a crime. When more parents are charged with reduced-offense culpability as a result of their child committing a crime, more parents will become aware

208. See MICH. COMP. LAWS § 750.316 (1931) (first-degree murder); MICH. COMP. LAWS § 750.317 (1931) (second-degree murder); MICH. COMP. LAWS § 750.321 (1931) (manslaughter).

209. Stevenson, *supra* note 57, at 1537 (speaking to deterrence and notice being dependent on what information regarding what behavior is forbidden).

210. Buragas, *supra* note 115.

211. WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 5.6(a), at 394 (2d ed. 2003).

212. See *supra* Part II, Section B.

213. See *supra* Part II.

214. See generally Kirk R. Williams & Richard Hawkins, *Perceptual Research on General Deterrence: A Critical Review*, 20 L. & SOC’Y REV. 545, 545 (1986) (“Deterrence theory implies a psychological process whereby individuals are deterred from committing criminal acts only if they perceive legal sanctions as certain, swift, and/or severe.”).

that the law punishes parental conduct that contributes to, even if it is not the principal cause of, a child's crime.

General deterrence for reduced-offense culpability will depend on case law and the public's knowledge of the offending parent's behavior. Unlike robbery or battery statutes, where the conduct forbidden is described in the statute,²¹⁵ forbidden parental conduct in a reduced-offense case cannot be found in the text of the statute. Reduced-offense cases must develop the law on what parenting conduct exposes a parent to criminal charges, such as second-degree murder or manslaughter. Because each reduced-offense charge is case-specific, others will have to know the specifics of the parental conduct to avoid that conduct. To illustrate, the Michigan community needs to know what conduct of the Oxford parents gave rise to manslaughter charges to avoid repeating that conduct.²¹⁶ News reports can spread information to the community on what conduct gives rise to reduced-offense culpability, thereby putting the community on notice of what parenting behavior to avoid. As the landscape currently stands, reduced-offense culpability in a parent-child case is uncommon,²¹⁷ so general deterrence may have limited effectiveness because not enough people in the community are aware of the specific parenting behavior to avoid. However, over time, with more reduced-offense culpability cases, examples of parenting conduct to avoid will spread and general deterrence will strengthen.

In the Oxford case, the benefits of general deterrence are considerable. The initial prosecution sent shockwaves through the United States because it was the first case where the parents of a school shooter faced criminal charges.²¹⁸ Detering other parents from engaging in parental conduct that leads to their child committing a school shooting results in significant monetary and emotional savings and can save lives. For example, in school districts where a school shooting occurred, per-pupil spending on support services increased and enrollment dropped.²¹⁹ Within three years of a shooting, those school districts take on an additional \$752 in additional per-pupil debt.²²⁰ The emotional price for survivors is staggering: the

215. MICH. COMP. LAWS § 750.88 (1931).

216. *People v. Crumbley*, 11 N.W.3d 576, 592–93 (Mich. Ct. App. 2023). Behavior such as the parents lack of mental health assistance, refusal to remove from school, and refusal to seek therapy are examples. *Id.*

217. Buragas, *supra* note 115.

218. Powers, *supra* note 1.

219. Lang Yang & Maithreyi Gopalan, *The Effects of Campus Shootings on School Finance and Student Composition*, 18 EDUC. FIN. & POL'Y 277 (2023).

220. Mark Lieberman, *School Shootings: The Long-Term Financial Fallout*, EDUC. WEEK (Apr. 5, 2023), <https://www.edweek.org/leadership/school-shootings-the-long-term-financial-fallout/2023/04> [https://perma.cc/3MZR-946P].

aggregate annual cost in terms of lost lifetime earnings is \$5.8 billion.²²¹ If punishing an offender created even a slight chance of deterring others from repeating conduct that led to a crime as horrible and costly as a school shooting, then there are significant savings. In the Oxford case, punishment of Jennifer and James puts other parents on notice that they may be criminally culpable if their child commits a school shooting, so the benefits of general deterrence are immense.

With respect to specific deterrence, punishment should discourage the offender from committing similar crimes in the future.²²² That is, the individual offender should know what conduct to avoid.²²³ In a reduced-offense case, the offending parent can know what conduct to avoid through the prosecution's initial charging decision, how the case was prosecuted, and the basis for their ultimate conviction. For example, the Oxford parents were charged with a crime because of their willful ignorance of the risks their child posed to others.²²⁴ Jennifer and James's failure to provide mental health resources, their purchase of a handgun, and their repeated refusal to provide support to Ethan constituted a "willful ignorance" of future risks.²²⁵ Thus, Jennifer and James know what conduct to avoid should they ever get the chance to parent Ethan in the future, and they are put on notice to not repeat that type of harmful parenting.²²⁶ For other reduced-offense cases, specific deterrence will have the strongest effect when the charges specifically indicate which parenting conduct resulted in criminal charges.

Outside of reduced-offense culpability, other laws with more effective deterrence may come to exist that hold parents criminally culpable for specific crimes based on their child's conduct.²²⁷ These laws can explicitly mention "parent" and "child" as well as the behavior the parent must exhibit in order to be found culpable.²²⁸ For example, a state legislature could create a statute that finds a parent liable for involuntary manslaughter if they provide aid to, or fail to act against, their child's

221. Maya Rossin-Slater, *Surviving A School Shooting: Impacts On The Mental Health, Education, And Earnings Of American Youth*, STANFORD UNIV. (June 2022), <https://siepr.stanford.edu/publications/health/surviving-school-shooting-impacts-mental-health-education-and-earnings-american> [<https://perma.cc/7NJN-CSSV>].

222. *See supra* Part II.

223. *See supra* Part II.

224. *See supra* Part II.

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

226. Realistically, this is unlikely as Ethan Crumbley is serving life in prison without parole. Powers, *supra* note 1.

227. For example, the law explained in Part III known as the "safe storage law." MICH. COMP. LAWS § 28.429 (2024).

228. The Michigan safe storage law does so: "[o]btains a firearm with the permission of the minor's parent or guardian." *Id.* § 28.429(7)(a)(i).

commitment of murder. In fact, the 2024 Michigan Legislature passed a safe-storage law following the Oxford case where a guardian can face up to fifteen years in prison if a minor under their care accesses an unsecured weapon and kills someone with it.²²⁹ These laws are new and developing, but they may be more effective at targeting undesired parental conduct than reduced-offense culpability by providing better notice and, as a result, better deterrence.

2. Incapacitation

Incapacitation is an important part of the cost-benefit calculation because incapacitation is analyzed on an individualized level.²³⁰ The benefit to society in incapacitating someone who is likely to commit another crime is the reduced likelihood of that person reoffending.²³¹ Incapacitation's main question is a personal one: what is the likelihood of the offender being unable to avoid future criminal conduct?²³² In a reduced-offense case where the parent is charged with a lesser but related offense, the question is: to what extent do the parent's actions demonstrate that they pose a danger to society and are likely to reoffend? There are two factors to consider: (1) whether the parent has a dangerous mindset that could result in others being hurt by that mindset and (2) whether the parent is unable to desist from their harmful parental conduct in the future.

First, considering whether the parent is a harm to others requires looking at the parent's proclivity to engage in dangerous conduct or recidivist actions.²³³ This type of analysis is not unique to a parent-child criminal case; it generally assesses whether the offender is likely to commit a crime again. The nature of the offense and past criminal record are ways to determine a parent's risk of harm to others prior to punishment.²³⁴ If the parent does not pose a risk of harm to others, a court must also consider whether the parental conduct, if repeated, could result in their child posing a risk to others, since it was the parental conduct that contributed to the child's actions. In this analysis, whether the child is

229. *See id.* § 28.429(6).

230. Katelyn Carr, Comment, *An Argument Against Using General Deterrence as a Factor in Criminal Sentencing*, 44 CUMB. L. REV. 249, 274 (2014) (“[T]he appropriateness of a sentence purposed to incapacitate an offender revolves around the inability of the offender to desist from future criminal conduct. This lack of control over future conduct is what justifies incapacitation.”).

231. *Id.*

232. *Id.*

233. *Id.* (explaining that incapacitation means looking at the individual offender's proclivities).

234. Jefferson, *supra* note 61.

incarcerated might be a factor; if the child is incarcerated, particularly for a long period of time, the parental conduct will be less likely to contribute to future criminal acts of the child simply because the child is not in the care of the parents.²³⁵ Additionally, if those parents have no other children, they cannot engage in further parenting conduct. Even if those parents have another child, their ability to desist from the parental conduct that gave rise to the reduced offense may depend on whether the child is similarly situated to the offending child.

Consider a family with a father, a mother, a thirteen-year-old son with paranoia, and a seventeen-year-old daughter. The father and mother refuse to provide medical treatment to their thirteen-year-old son, despite his requests. The father eventually purchases a handgun for his son, takes his son to the shooting range, and tells his son to “stop being a baby” when his son complains about his paranoia. Three days after obtaining the handgun, the son murders his neighbor. The son is charged with first-degree murder, and his parents are charged with a reduced offense: involuntary manslaughter.²³⁶ If the son is convicted and incarcerated, the parents would be unable to engage in close parenting conduct with respect to their son during the time of his incarceration. However, the parents have another child: their seventeen-year-old daughter. Importantly, this daughter is four years older and does not have paranoia. The parents have not refused mental health treatment for their daughter because she has not requested any, and she has no interest in learning how to operate a handgun. The differences between the son and the daughter can make it unlikely that the parenting conduct that gave rise to the manslaughter charges (the refusal of medical treatment and the purchase of a handgun) will be repeated. Thus, in this hypothetical, there may be little benefits in incarcerating the parents.

That said, there are troubling implications when a factor in assessing the benefit of incapacitation is whether a parent has other children and whether those children experience mental health concerns. When two parents with equally harmful parenting practices have different numbers of children, the above logic would suggest that incapacitation would result in more harm reduction in cases where the parents have more children because those are the parents who are most likely to provide parental conduct that could result in another child acting similarly. Likewise,

235. While the author acknowledges a parent can make some decisions regarding the care of an incarcerated child, many day-to-day decisions are made by the Government. *See generally* Pamela Lewis, Comment, *Behind the Glass Wall: Barriers That Incarcerated Parents Face Regarding the Care, Custody and Control of Their Children*, 19 J. AM. ACAD. MATRIM. LAW 97 (2004).

236. Assume that, for this example, the prosecution’s theory for involuntary manslaughter uses the same language as Oxford case.

incapacitating a parent who has more children with mental health issues would be more beneficial than incapacitating a parent who has fewer children with mental health issues, assuming that children with mental health issues are more likely to commit these types of heinous crimes. In this sense, a parent would be penalized more heavily if they had two or more children with mental health concerns, a situation that might seem unjust or promote undesirable societal norms. Society should not discourage people from having children nor penalize people for raising children with mental health issues. The decision to have children is a personal and special choice,²³⁷ and society should preserve the sanctity of that decision by not considering the number of children in a reduced-offense incapacitation analysis. Additionally, raising a child with mental health issues is a demanding life,²³⁸ and the parents who do so deserve assistance, not marks against them. Thus, in the context of reduced-offense culpability, considering both the costs and benefits, no weight should be given to the presence of the parent's other children or to their mental state. Under a utilitarian analysis, the benefits of incapacitation as they relate to the family should consider only whether the parent has the ability to exercise control over the offending child, not the other children in the family.

In the Oxford case, the parents had one child, and he was incarcerated for life following the offense.²³⁹ Thus, though the Oxford parents can exercise some parental control while their child is incarcerated,²⁴⁰ the parents are limited in their ability to engage in the parental conduct that gave rise to the manslaughter charges. The parents cannot purchase a gun for their child while he is incarcerated, nor can they refuse to provide him mental health resources.²⁴¹ Thus, the benefits of incapacitation of the Oxford parents seem small.

However, not incarcerating the parent simply because their child has been incarcerated creates other concerns. A trade-off could emerge between the length of time a parent and child are incarcerated. If the child

237. Rosemary Shaw Sackett, *Terminating Parental Rights of the Handicapped*, 25 FAM. L.Q. 253, 258 (1991) (“The rights of parents that flow from this common law are the rights of man and woman to establish a home and bring up children. This right to establish a home and bring up children is a privilege long recognized as essential to the orderly pursuit of happiness. The fundamental interests at stake in the right to parent are ranked among the most basic of civil rights.”).

238. See David R. Katner, *Raising Mental Health Issues-Other Than Insanity-in Juvenile Delinquency Defense*, 28 AM. J. CRIM. L. 73 (2000).

239. Breen, *supra* note 146.

240. See Lewis, *supra* note 235.

241. Under Michigan law, a prisoner themselves can request mental health resources. See MICH. COMP. LAWS § 330.2003a (2014).

is incarcerated for a long time, then there is a lower risk of the parent repeating their parental conduct, suggesting that incarceration is less necessary for the parent. Conversely, if the child is incarcerated for less time, there is a greater risk of the parent repeating their parental conduct, incentivizing a longer parental incarceration. This potential trade-off presents troubling implications. Incapacitation is one of the most severe restrictions a society can place on an individual, for it carries with it the loss of freedom, stigma, and the danger of prison life.²⁴² In assessing the cost-benefit of incapacitation of an offender, prosecutors ought to restrict their considerations to the individual offender's guilt: what did this person do to warrant this criminal sentence? Factoring in the sentence length of one person to decide the sentence length of another person discounts the principle that one should serve time only for their crime. Additionally, defense attorneys are ethically obligated to advocate for the best outcome for their client, which often means the shortest sentence.²⁴³ A prosecutor having a discussion with the child's defense attorney and the parent's defense attorney would find both defense attorneys advocating for the shortest sentence, with neither defense attorney yielding to a trade-off. Thus, in assessing the benefits of incapacitation, utilitarianism should not consider whether the benefits change when trading off sentence lengths of the parent and the child.

Costs are an integral part of assessing incapacitation.²⁴⁴ The cost of incapacitation can vary, but it often includes prison housing, feeding, monitoring, as well as emotional costs to those incapacitated and their loved ones.²⁴⁵ In a parent-child reduced offense case, a significant cost is the emotional impact of removing a parent from their child.²⁴⁶ Even if the child is already incarcerated for committing a crime and thus separated from their parents, the additional incarceration of the parents may reduce chances for visitation and support.²⁴⁷ For example, the Crumbleys face emotional costs in separating from Ethan.²⁴⁸ Housing, feeding, and monitoring the Crumbley family come at a cost to the state: the average

242. Ann Cammett, *Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt*, 117 PENN ST. L. REV. 349, 353 (2012).

243. *People v. Brown*, 723 N.E.2d 362, 366 (Ill. App. Ct. 1999) (“Part of this obligation is satisfied when defense counsel accurately informs his client of the maximum and minimum sentences that can be imposed for the offenses charged by the State.”).

244. *See supra* Part II.

245. *See generally* David S. Abrams, *The Prisoner's Dilemma: A Cost-Benefit Approach to Incarceration*, 98 IOWA L. REV. 905 (2013).

246. Hannah R. Lustman, Note, *Paroling for “Public Benefit”: Amending 8 U.S.C. § 1182 to Achieve the Benefits of Discretionary Parole for Asylum Seekers*, 29 KAN. J.L. & PUB. POL'Y 221, 244 (2020).

247. *Id.*

248. *Id.*

annual cost of incarceration per prisoner is \$47,900, totaling almost \$100,000 for both parents, per year, for the ten to fifteen years of their sentences.²⁴⁹ Furthermore, if the parents have other children, a significant cost is inflicted upon the family by removing the parents from their children's lives.²⁵⁰ All of these costs should be examined alongside the benefits of incapacitating an offender, parent or child, before concluding that incapacitation is beneficial.

The costs of incapacitating James and Jennifer likely outweigh the benefits. In terms of assessing the risk Jennifer and James pose to society, neither has additional children and neither parent seems to pose a risk of harm to others since they have never directly harmed others in the past.²⁵¹ Ethan was their only child, and he is imprisoned for life without parole.²⁵² The control they have over Ethan is limited; therefore, Jennifer and James cannot engage in the harmful parental conduct that gave rise to their criminal charges. Thus, the risk Jennifer and James pose to society is minimal, and the benefits of incapacitation are small. Regarding costs, the emotional toll of separating James and Jennifer from Ethan depends on how close they were with their son, but the cost of permanently removing a child from a parent can be substantial.²⁵³ Additionally, housing, feeding, and monitoring Jennifer and James cost the State approximately \$96,000 per year.²⁵⁴ Thus, in incapacitating Jennifer and James, the costs likely outweigh the benefits.

3. Rehabilitation

Rehabilitation aims to provide resources and treatment so that the offender can reenter society as a productive and contributing member.²⁵⁵ Ideally, when an offender is rehabilitated, it becomes easier to find stable work and maintain healthy relationships.²⁵⁶ These resources and treatment

249. MICH. HOUSE FISCAL AGENCY, LEGISLATIVE ANALYSIS: HATE CRIMES AND INSTITUTIONAL DESECRATION 5–6 (2023), <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-4474-E3861072.pdf> [<https://perma.cc/GLE9-T2GD>] (analyzing House Bill 4474, House Bill 4475, House Bill 4476, and House Bill 4477).

250. Lustman, *supra* note 246.

251. Powers, *supra* note 1.

252. *Id.*

253. Lustman, *supra* note 246.

254. See MICH. HOUSE FISCAL AGENCY, *supra* note 249.

255. Chad Flanders, *The Supreme Court and the Rehabilitative Ideal*, 49 GA. L. REV. 383 (2015) (“The goal was not that the inmate be totally healed of his criminological tendencies (whatever that would mean), but that he become more fit to reenter society as a productive and contributing member.”).

256. *Id.*

are personalized to the offender, and a parent facing imprisonment because of a reduced-offense conviction would need, at a minimum, parenting classes capable of addressing the problematic behavior.²⁵⁷ Two issues arise in the rehabilitation of an offender with regard to their parenting: a lack of effective prison parenting programs and the personal nature of parenting.

Prison parenting programs are exceedingly rare and limited where they do exist.²⁵⁸ Rehabilitation requires the incarcerated parent to receive resources that teach them the ways to modify their behavior, and if these resources are limited, rehabilitation may not occur.²⁵⁹ For parents who are incarcerated because of their parenting decisions, effective parenting classes must cater to the unique needs of parents whose child committed a crime without the parents' direction. Specifically, parents would need training on how to recognize warning signs, talk about anger and impulse, and limit exposure to drugs and alcohol.²⁶⁰ Most prison parenting programs focus on nurturing positive parent-child relationships through literacy and visitation support.²⁶¹ Few programs offer mental health education, support, and training.²⁶² Mental health education is necessary to train parents on how to recognize warning signs in their children, so current prison programs would do little to rehabilitate parents incarcerated due to crimes of their children.

Additionally, rehabilitation works best when the offender embraces change.²⁶³ However, how one raises one's child is an intimate, personal choice. Parents may have strong feelings about raising their children and push back on efforts to change their parenting. Rehabilitation for parents in reduced-offense culpability cases should paint rehabilitation as something other than a mandate that the parent change how they are raising their child. Classes should train parents on the warning signs a child

257. Beth Colgan, *Teaching A Prisoner to Fish: Getting Tough on Crime by Preparing Prisoners to Reenter Society*, 5 SEATTLE J. FOR SOC. JUST. 293 (2006).

258. Elise Zealand, *Protecting the Ties That Bind from Behind Bars: A Call for Equal Opportunities for Incarcerated Fathers and Their Children to Maintain the Parent-Child Relationship*, 31 COLUM. J.L. & SOC. PROBS. 247 (1998) (“[P]rison programs across the country shows a paucity of parenting programs available for imprisoned parents of both sexes.”).

259. Colgan, *supra* note 257, at 310 (“The support of positive familial relationships is important not only because of the potential benefit to prisoners’ children, but also because those relationships are linked to better behavior during incarceration and greater likelihood of success upon release.”).

260. Singer et al., *supra* note 194.

261. Dionne Barnes-Proby, *Programs for Incarcerated Parents*, RAND (Feb. 8, 2022), https://www.rand.org/pubs/research_reports/RRA1412-1.html [<https://perma.cc/Y5XF-4NPP>].

262. *Id.*

263. Colgan, *supra* note 257.

may exhibit during a mental crisis rather than suggest different ways a parent can talk to a child. Focusing on how to recognize the risks allows the parent to identify when their child might harm others while also finding a solution with their own form of parenting.

In the Oxford case, the benefits of rehabilitation are minimal. Jennifer and James are not able to raise Ethan in their home. Nonetheless, there are benefits in providing rehabilitative services so that Jennifer and James can reenter society,²⁶⁴ but there are minimal benefits in providing parenting classes when Jennifer and James will not be able to parent their child. Generally, in a reduced-offense case, rehabilitation will have the most benefits when the parent can raise their child upon release.

4. Utilitarian Theory Conclusions

The deterrent benefits of punishing parents through reduced-offense culpability are most realized when the community knowledge exists to avoid specific parenting behaviors. Given the few cases employing reduced-form culpability, the deterrent effects are not as strong as they could be, though they may grow with time if similar events occur.²⁶⁵ Incapacitation benefits depend on whether the parent is likely to harm others and whether the offending child is incarcerated. In assessing the cost-benefit of incapacitation, utilitarianism should not consider whether the parent has other children, the other children's mental states, or potential trade-offs in the sentence length between the parent and child. Rehabilitation must target the unique needs of parents in reduced-offense culpability cases. However, the personal nature of parenting makes it difficult for parents to embrace rehabilitative efforts.

Applied to the Oxford case, utilitarianism justifies the parents' current punishment. In terms of benefits, under general deterrence theory, punishing Jennifer and James deters other parents from engaging in harmful conduct by putting other parents on notice of the risk of facing criminal charges if their child commits murder. This is particularly important in the context of school shootings, which unfortunately, have significant societal costs.²⁶⁶ The costs of school shootings, at a monetary and emotional level, are so immense that even if the deterrent effect of the punishment of the Oxford parents is slight, the benefits are significant. With respect to specific deterrence, punishing James and Jennifer

264. Even these benefits would be minimal, considering the fact that Jennifer and James have no assaultive criminal history.

265. Mascarenhas, *supra* note 112 (listing the few instances where parents were criminally charged following their child's act).

266. *See supra* Part IV.

individually deters them from repeating their harmful parental conduct because they are now on notice of what parental conduct to avoid. In terms of costs, the costs of incapacitating Jennifer and James likely outweigh its benefits. Ethan's incarceration makes it unlikely Jennifer and James can repeat their harmful parental conduct, and the annual costs of incarceration for Jennifer and James are nearly \$100,000 per year. The benefits of rehabilitation are similarly minimal because Jennifer and James cannot fully parent their child, as Ethan is incarcerated. In all, the unique nature of the Oxford case makes the benefits of deterrence outweigh the costs of incapacitation and rehabilitation, and thus utilitarianism justifies the Oxford parents' punishment.

V. CONCLUSION

Reduced-offense culpability is a novel legal theory not likely to go away.²⁶⁷ After the successful prosecution in the Oxford case, Georgia prosecutors followed suit.²⁶⁸

In anticipation, this Note first examined whether reduced-offense culpability is justified under the two primary theories of criminal punishment. Using the Oxford case as a crucible, under retributivism, this Note concluded that assaultive retributivism justifies punishment when the parent's action or inaction can be causally linked to the child's offense.²⁶⁹ Protective retributivism justifies punishment when the parent failed to fulfill their parenting obligations, given the resources available to them.²⁷⁰ Victim vindication justifies punishment when the parent recognized and proceeded to ignore the signs that their child posed a risk of harm to others.²⁷¹

Furthermore, utilitarianism justifies punishment when the benefits of deterrence, incapacitation, and rehabilitation outweigh the costs.²⁷² Deterrence in a reduced-offense culpability regime is most effective when parents know what parenting conduct to avoid and the severity of punishment.²⁷³ The cost-benefit analysis of incapacitation should limit itself to whether the parent is likely to harm others or has the ability to raise the offending child in the future.²⁷⁴ The analysis should not consider whether the parent has other children, those children's mental states, or the

267. *See supra* Part IV.

268. *See supra* Part IV.

269. *See supra* Section IV.A.

270. *See supra* Section IV.A.

271. *See supra* Section IV.A.

272. *See supra* Section IV.B.

273. *See supra* Section IV.B.

274. *See supra* Section IV.B.

trade-off in sentence lengths between parent and child.²⁷⁵ Rehabilitation will be most effective when parenting programs offer specific training for parents to target harmful parenting, such as training on identifying warning signs in children.²⁷⁶

Whether society should punish parents for their child's crimes is an important question. In every case, either a retributive or utilitarian theory should justify punishment. Going forward, in reduced-offense cases, special attention must be paid to the parent's resources, the benefits of deterring a similar offense in the future, and the cost of incapacitation and family separation. Only after careful consideration of these factors can one truly say a parent "deserves" punishment because of their child's actions.

275. *See supra* Section IV.B.

276. *See supra* Section IV.B.