Placing Blame After the Suicide of a Minor: Analysis of *State v. Scruggs* and Connecticut's Risk-of-Injury Statute

M. LAUREN GILLIES[†]

On January 2, 2002, the community of Meriden, Connecticut was shocked to discover that Joseph Daniel Scruggs (Daniel), a twelve-year-old boy, had committed suicide.[1] The community's shock grew as the press began to discover and report the details of Daniel's life. Although there was an abundance of evidence suggesting that Daniel was a troubled boy, the system designed to protect such children failed to help him.[2] Daniel was tormented at school, yet teachers and other school officials often did nothing to protect him or stop the tormentors.[3] His mother, Judith Scruggs, had lost control of him. She was unable to make him attend school or bathe and had given up attempting to do so.[4] Daniel's poor hygiene and poor school attendance caused the school to make referrals to the State of Connecticut Department of Children and Families.[5] A truancy officer from the Connecticut Superior Court for Juvenile Matters and a social worker from the Connecticut Department of Children and Families were assigned to Daniel.[6] But neither of the state officials was helpful to Daniel, and they took little action.[7]

The next shock occurred in April 2003, when Judith was criminally charged with two counts of risk of injury to a minor and one count of cruelty to persons.[8] On October 6, 2003, a jury convicted Judith of one count of risk of injury to a minor for providing an unhealthy home

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[†] Juris Doctor candidate, University of Connecticut School of Law, 2006.

[1] CBS News, *Suicide of a 12-Year-Old* (Oct. 29, 2003), http://www.cbsnews.com/stories/2003/10/28/60II/main580507.shtml.

[2] *See* OFFICE OF THE CHILD ADVOCATE, STATE OF CONNECTICUT & THE CHILD FATALITY REVIEW PANEL, INVESTIGATION OF THE DEATH OF JOSEPH DANIEL S. i–ii (2003), *available at* http://www.ct.gov/oca/lib/oca/josephdaniel.doc [hereinafter CHILD ADVOCATE].

[3] *Suicide of a 12-Year-Old*, *supra* note 1.

[4] *See Suicide of a 12-Year-Old*, *supra* note 1 ("Scruggs says she realized that Daniel wasn't bathing . . . 'I figured it was a rebellion. People say, 'Why didn't you make him wash.' He's 12 years old. I'm not going to stand over a 12 year-old [sic], make sure he gets in the tub."); *see also* NBC30, *Judith Scruggs Receives Suspended Sentence* (May 14, 2004), http://www.nbc30.com/news/3305458/detail.html ("She told him to take showers, she said, but could not force himself [sic] to wash.").

[5] CHILD ADVOCATE, *supra* note 2, at 9–10.

[6] *Id.* at 1, 9–10.

[7] *See id.* at i ("When the Department of Children and Families and the juvenile court became involved, both agencies documented the problems, as if to confirm them, but did little.").

[8] *See Suicide of a 12-Year-Old*, *supra* note 1 ("But the story took an unexpected twist when the question of who is to blame moved from the schoolyard into Daniel's own home, and then into a court of law.").

environment.[9] This conviction made Judith the first person to be convicted for having a messy house and the first parent to be convicted for risk of injury to a child after the child committed suicide.[10]

The news of Judith's conviction received national attention.[11] National newspapers reported the events and Judith appeared on *60 Minutes II*[12] and the *Oprah Winfrey Show*[13] to plead her case to the public. In response, people began voicing their opinions both in favor of and against Judith's conviction in editorials, websites, online discussions, and protests. These discussions focused on who was to blame for Daniel's death and whether it was appropriate to charge a parent for causing a child's suicide.[14]

However, this controversial discussion was slightly misguided. Most reports suggested that Judith was criminally charged for contributing to or causing Daniel's death and that the jury blamed Judith for Daniel's suicide.[15] Only few reports accurately reported that Judith was not convicted or blamed for causing or contributing to Daniel's suicide, but was convicted for having a cluttered house that *could have* harmed Daniel's emotional health.[16]

Connecticut's risk-of-injury statute is broad and criminalizes acts that cause or permit a minor to be placed in a situation in which the physical or

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[9] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 110 (Conn. Super. Ct. 2004); *Suicide of a 12-Year-Old*, *supra* note 1.

[10] *See* Traci Neal, *Everyone was Responsible*, HARTFORD ADVOC.**,** Nov. 13, 2003, at A1 ("Scruggs' precedent-setting conviction, if it stands, could mean that anyone who keeps a messy home can be charged with the same crime."); *see* Marc Santora, *After Son's Suicide, Mother is Convicted over Unsafe Home*, N.Y. TIMES, Oct. 7, 2003, at B1 ("It was also the first case in which prosecutors in Connecticut criminally charged a parent in connection with the suicide of his or her own child, lawyers involved with the case and outside experts said. . . . 'It is not unusual for parents to be charged and convicted of risk to injury to a minor. What is unusual is for that charge to be levied following a suicide.'").

[11] *Judith Scruggs Receives Suspended Sentence*, *supra* note 4. *See, e.g.*, Helen O'Neill, *Plenty of Blame to go Around for Boy's Suicide*, L.A. TIMES, Jan. 18, 2004, at A1; *See, e.g.,* Alaine Griffin, *Judge Eases Sentence of Mom Convicted in Son's Suicide*, CHARLESTON GAZETTE, May 15, 2004, at 8A.

[12] *60 Minutes II* (CBS television broadcast, Oct. 29, 2003).

[13] *Oprah Winfrey Show* (CBS television broadcast, June 1, 2004).

[14] *See, e.g.,* Tracy Connor, *Jury Pins Suicide on a Sloppy Mom*, N.Y. DAILY NEWS, Oct. 7, 2003, at 10 ("I think there's been a terrible injustice here—to tell somebody they're guilty because their house is dirty . . . ."); *see, e.g.,* Griffin, *supra* note 11, at 8A ("Morris said her mother 'is a scapegoat so DCF and the schools don't get blamed.'"); *see, e.g.,* Alaine Griffin, *State Not Likely to Seek Prison Term for Scruggs*, HARTFORD COURANT, May 13, 2004, at A1 ("There are those who may disagree, but it is our position that parents are responsible for the care and welfare of their children . . . .") [hereinafter *State Not Likely*].

[15] Neal, *supra* note 10, at A1. *E.g.*, Connor, *supra* note 14, at 10 ("A Connecticut mom who kept her home like a pigsty was convicted yesterday of contributing to the suicide of her 12-year-old son . . . ."); *e.g., State Not Likely*, *supra* note 14, at A1 ("Scruggs, 53, was convicted last October of being responsible for the suicide of her 12-year-old son . . . .").

[16] Neal, *supra* note 10, at A1. *Compare* Stacey Stowe, *Boy Who Sought Help Was Seen as a Target*, N.Y. TIMES, Oct. 7, 2003, at B5, *with* Diane Scarponi, *Juror: Connecticut Mom Didn't Help Suicidal Son*, ASSOCIATED PRESS, Oct. 7, 2003.

mental health of the child is likely to be impaired.[17] Pursuant to the statute, Judith would be guilty if the fact-finder, after considering Daniel's emotional state, determined the condition of the house was *likely* to harm his emotional health.[18] The prosecution did not have to prove, and the fact-finder would not have to believe, that the messy house *actually harmed* Daniel in any manner.[19]

If more news reports had made this distinction, there probably would have been an even stronger public reaction. There is no law that proscribes messiness or sets standards to which a house must be kept, and most people would not have believed that one could be criminally punished for keeping an unkempt house. Because there was no law against messy homes, Judith may not have had adequate notice that her actions were criminal. This raises the question of whether Connecticut's risk-of-injury statute is unconstitutionally vague and, therefore, violates due process.

Judith's case became even more controversial when members of the jury admitted to convicting Judith based at least in part on evidence that should not have been considered in its decision.[20] Furthermore, Judith's appeals to overturn her conviction were denied.[21]

This Comment will analyze *State v. Scruggs* in order to scrutinize Connecticut's risk-of-injury statute. Part I will be an account of Daniel and Judith's life leading up to Daniel's death. Part II will review Judith's criminal case and her attempted appeals. Part III will use the *Scruggs* decision to discuss problems with Connecticut's risk-of-injury statute. Finally, Part IV will suggest alternatives or modifications to the statute that may address the concerns discussed in Part III.

I. THE LIFE AND DEATH OF DANIEL SCRUGGS

On January 1, 2002, Judith Scruggs was a fifty-year-old single mother.[22] She had undergone three divorces and had had five children.[23] Judith's first three children were raised by Judith's mother,[24] and Judith

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[17] *See* CONN. GEN. STAT. § 53-21(a)(1) (2005).

[18] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 110, 113 (Conn. Super. Ct. 2004).

[19] *Id.* at 112 (citing State v. Branham, 56 Conn. App. 395, 402 (2000)).

[20] *See Scruggs*, 37 Conn. L. Rptr. No. 3 at 110, 113 n.1 ("There was no evidence whatsoever, either by direct or circumstantial proof, however, that [the knives] or Daniel's use of them was likely to . . . injure either his mental or physical health."); *see* Griffin, *supra* note 11, at 8A ("Jurors interviewed after the verdict said they were troubled that J. Daniel slept in his closet with knives and a homemade spear."); *see Suicide of a 12-Year-Old*, *supra* note 1 ("*60 Minutes II* spoke with four of the six jurors, who say there was one piece of evidence that led them all to convict. 'This case was whether or not this child was put in a situation where he could harm himself. And I think what our decision was based on was the fact that he slept surrounded by kitchen knives.'").

[21] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 113; *Judith Scruggs Receives Suspended Sentence*, *supra* note 4.

[22] O'Neill, *supra* note 11, at A1.

[23] Santora, *supra* note 10, at B1.

[24] O'Neill, *supra* note 11, at A1.

had very little contact with them until they were teenagers. By 2002, they were in their late twenties[25] and had been living independently for over a decade. Judith was living in Meriden, Connecticut with her youngest child, Daniel, who was twelve years old, and his half-sister, Kara, who was seventeen years old.[26] Judith's most recent husband and Daniel's father, John Edward Scruggs, left the family in 1990 when Daniel was three months old.[27] John was incarcerated until 2000 and had since been living in Virginia.[28] He never played any significant role in Daniel's life.[29] Judith worked sixty hours a week to support her children.[30] She held a full-time position as a teacher's aid at Washington Middle School, the school that Daniel attended, and she also worked part-time as a manager at Wal-Mart.[31]

Daniel was in the seventh grade at Washington Middle School where he was tormented by his peers and had a hard time fitting in.[32] He was small for his age and weighed only sixty-three pounds.[33] While he was exceptionally smart and had an IQ of 139,[34] he had a learning disability[35] and speech problems.[36] Daniel often wore mismatched clothes, wore the same clothes for days, and had bad breath.[37] Students called him "stinky" or "scrubs."[38] Judith was aware that one student picked on Daniel and she intervened and disciplined the boy.[39] However, this only upset Daniel, and he yelled at her claiming that she had only made things worse.[40] Kara was also aware that her brother was being picked on. On one particular day, after hearing that his life had been threatened, Kara asked him if what she had heard was true and if there was anything she could do to help.[41] Daniel responded that he was fine and that he could take care of himself.[42]

Neither Judith nor Kara claimed to have known the extent to which

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[25] *Id.*
[26] *Suicide of a 12-Year-Old*, *supra* note 1.
[27] CHILD ADVOCATE, *supra* note 2, at 2.
[28] *State Not Likely*, *supra* note 14, at A1.
[29] CHILD ADVOCATE, *supra* note 2, at 2.
[30] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 109 (Conn. Super. Ct. 2004).
[31] O'Neill, *supra* note 11, at A1.
[32] CHILD ADVOCATE, *supra* note 2, at 17; O'Neill, *supra* note 11, at A1; *see* Stowe, *supra* note 16, at B5.
[33] CHILD ADVOCATE, *supra* note 2, at i; *Suicide of a 12-Year-Old*, *supra* note 1.
[34] CHILD ADVOCATE, *supra* note 2, at 4; O'Neill, *supra* note 11, at A1.
[35] CHILD ADVOCATE, *supra* note 2, at 4; *Suicide of a 12-Year-Old*, *supra* note 1.
[36] *See* Application for Arrest Warrant ¶ 17 ("[Judith] only allowed the SAT (Student Assistance Team) to address the decedent's speech problems.") [hereinafter Brandl Aff.]; *see* O'Neill, *supra* note 11, at A1.
[37] O'Neill, *supra* note 11, at A1.
[38] CHILD ADVOCATE, *supra* note 2, at 17.
[39] O'Neill, *supra* note 11, at A1.
[40] *Id.*
[41] *Id.*
[42] *Id.*

Daniel was bullied, and they were later shocked to hear about Daniel's experiences.[43] Melissa Smith, a peer of Daniel's at Washington Middle School, told reporters that Daniel was bullied every day that he was in school.[44] She said that sometimes, the teachers would tell the bullies to stop, but that other times, the teachers would ignore the situation.[45] Students reported that Daniel was pushed, yelled at, hit, kicked, spit upon, laughed at, had "kick me" signs attached to his back, was thrown off bleachers and down stairs, shoved into desks, and was sometimes forced to eat his lunch off the cafeteria floor.[46] Students stole and hid his belongings.[47] Once, his head had been pulled back so far that his neck nearly snapped.[48] One teacher also admitted that she held her nose whenever she passed Daniel.[49] Daniel's normal response to the bullying was to leave in tears, but on occasion, Daniel lashed back at his tormentors and was suspended for fighting.[50]

Although Judith claims that she was not aware of the extent of the bullying, she was aware that Daniel did not like school and did not want to attend.[51] She claims that Daniel refused to bathe and tried to use the fact that he had not bathed as an excuse not to go to school,[52] and when he was in class, he would soil himself in order to get sent home.[53] He refused to go to school, claiming he was afraid, and Judith did not know how to make him attend.[54] In fact, out of the seventy-eight days of school in the fall semester of 2001, Daniel had missed forty-four days and had been late twenty-nine days, leaving only five days of perfect attendance.[55]

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[43] *Suicide of a 12-Year-Old*, *supra* note 1.

[44] CHILD ADVOCATE, *supra* note 2, at 17; *Suicide of a 12-Year-Old*, *supra* note 1.

[45] *Suicide of a 12-Year-Old*, *supra* note 1.

[46] *See* CHILD ADVOCATE, *supra* note 2, at i ("Reports indicate that the boy was pushed, hit, choked, made fun of, and had his belongings stolen (to name a few offenses)."); *see* O'Neill, *supra* note 11, at A1 ("He had been shoved into desks."); *see Suicide of a 12-Year-Old*, *supra* note 1 ("'People would push him off bleachers, put 'kick me' signs on his back, push him around and yell at him.'. . . He was hit, kicked, spit on, laughed at, thrown down a flight of stairs, and sometimes made to eat his lunch off the cafeteria floor.").

[47] CHILD ADVOCATE, *supra* note 2, at i; O'Neill, *supra* note 11, at A1.

[48] O'Neill, *supra* note 11, at A1.

[49] CHILD ADVOCATE, *supra* note 2, at 17; O'Neill, *supra* note 11, at A1.

[50] O'Neill, *supra* note 11, at A1.

[51] *See Suicide of a 12-Year-Old*, *supra* note 1.

[52] *Id.*

[53] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 112 (Conn. Super. Ct. 2004); *see* Brandl Aff., *supra* note 36, ¶ 21; s*ee* CHILD ADVOCATE, *supra* note 2, at 11. *But see* CHILD ADVOCATE, *supra* note 2, at 3, 5 (despite beliefs that Daniel's actions were intentional, there is evidence to suggest that Daniel's problem with soiling himself may have been a result of an undiagnosed medical condition. School records indicate that he had done so several times in the first grade, and then several more times in third grade. In 1997, he had a medical evaluation with Family Practice Associates, and his physician referred him to a urologist. The urologist did not provide any treatment because he was told by Judith that the condition was improving. Judith was instructed to contact the specialist if the condition ever got worse, but this was never done.).

[54] O'Neill, *supra* note 11, at A1.

[55] *See Suicide of a 12-Year-Old*, *supra* note 1; *see* CHILD ADVOCATE, *supra* note 2, at i.

Judith met with middle school officials several times about Daniel. On March 27, 2001, when Daniel was still in the sixth grade, Judith met with a guidance counselor and a social worker concerning Daniel's attendance, anger management, peer relations, and emotional outbursts.[56] It was suggested that Daniel receive a mentor at the school, obtain preferential seating, and receive counseling.[57]

On October 4, 2001, Judith met with teachers, guidance counselors, social workers, principals, and psychologists from Washington Middle School concerning Daniel's failure to complete class work, lack of motivation, inattention in class, failing grades, frequent absences, frequent tardiness, lack of socialization, interaction with peers, poor hygiene, and immaturity.[58] The school wanted permission to approach Daniel with these issues, but Judith granted them permission only to address Daniel's speech problems.[59]

About two weeks later, on October 15, 2001, Judith met with a guidance counselor and assistant principal concerning Daniel's hygiene and attendance.[60] At this meeting, Judith complained that Daniel was being picked on by his peers.[61] The school officials responded that Daniel's passive aggressive behavior initiated many of these instances and that he was often picked on because of his extremely poor hygiene, strong body odor, and his intentional passing gas or defecating in his pants while he was in school.[62] She admitted that she was aware of the connection between his hygiene and him being picked on, but claimed she could not force him to wear clean clothes or bathe.[63] The school gave Judith a list of community service providers and counselors, but Judith did not contact any of them.[64]

Upon Judith's request, the school sent an outreach worker who spoke with Daniel on the porch of his home.[65] The outreach worker got Daniel to sign an agreement in which he promised to attend school.[66]

In a meeting two days later, on October 17, 2001, it was suggested that Daniel be moved to School Within A School (SWAS),[67] a program Washington Middle School had for socially and emotionally disturbed

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[56] Brandl Aff., *supra* note 36, ¶ 16; CHILD ADVOCATE, *supra* note 2, at 8.
[57] CHILD ADVOCATE, *supra* note 2, at 8.
[58] Brandl Aff., *supra* note 36, ¶ 18.
[59] *Id.* ¶ 17.
[60] Brandl Aff., *supra* note 36, ¶ 19; CHILD ADVOCATE, *supra* note 2, at 9.
[61] Brandl Aff., *supra* note 36, ¶ 19; CHILD ADVOCATE, *supra* note 2, at 9.
[62] Brandl Aff., *supra* note 36, ¶ 19; CHILD ADVOCATE, *supra* note 2, at 9.
[63] Brandl Aff., *supra* note 36, ¶ 19; CHILD ADVOCATE, *supra* note 2, at 9.
[64] Brandl Aff., *supra* note 36, ¶ 19.
[65] CHILD ADVOCATE, *supra* note 2, at 9.
[66] *Id.*
[67] Brandl Aff., *supra* note 36, ¶ 21.

children.[68] This program would allow Daniel to get away from a specific student that was teasing him.[69]

The following week, on October 25, school officials met with Judith and requested permission to move Daniel into SWAS and to have Daniel undergo a psychiatric evaluation.[70] The evaluation would have included a depression and suicide screening.[71] Judith gave the school permission to move Daniel into the program, but not to perform the evaluation.[72] Four days after Judith granted the school's request to move Daniel into SWAS, she rescinded her consent because Daniel did not want to attend.[73] However, the following day, she changed her mind again and agreed to the program.[74]

On October 26, Donna Mule, a middle school counselor, referred Daniel's case to the Department of Children and Families (DCF).[75] The referral was made because of Daniel's out-of-control behavior, refusal to follow his mother's directions, intentional soiling of his pants, poor hygiene, and excessive absence from school.[76] The DCF social worker met with Judith and Daniel three days later at the school.[77] She learned that Judith thought Daniel was depressed because of the death of his grandparents.[78] From her conversations with Daniel, she learned that he did not attend school because he was constantly picked on.[79] Daniel refused to talk about his soiling himself, and the DCF social worker concluded that he did so as an excuse to get out of class.[80]

On November 29, 2001, Judith met with the DCF worker at the school, and Judith told the DCF worker that Daniel was still not attending school consistently, but that he had an appointment with a truancy officer the following day.[81] Daniel became eligible for a referral to the court in September when he had acquired four unexcused absences.[82] However, the truancy officer did not receive a referral from Washington Middle School until November 1, 2001.[83]

On November 30, 2001, Daniel and Judith met with the truancy

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[68] CHILD ADVOCATE, *supra* note 2, at 11.
[69] Brandl Aff., *supra* note 36, ¶ 21.
[70] *Id.* ¶ 22.
[71] *Id.*
[72] *Id.*
[73] *Id.* ¶ 24.
[74] *Id.*
[75] *Id.* ¶ 23; CHILD ADVOCATE, *supra* note 2, at 10.
[76] CHILD ADVOCATE, *supra* note 2, at 10.
[77] *Id.* at 11.
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.* at 11–12.
[82] *Id.* at 8–9.
[83] *Id*. at 12.

officer.[84] The officer had Daniel fill out a self-evaluating survey that assessed Daniel's risk of truancy.[85] Daniel's answers suggested that he was at little risk for truancy and had little need for the court's assistance.[86] Daniel stated that he had no health or hygiene problems, no learning barriers, and good support from his peers.[87] The officer's report stated that Daniel had been absent from school eleven times, but at the time of the appointment, Daniel had actually missed twenty-nine days of school and had been tardy twenty times.[88] The officer did not know of the additional absences.[89]

After a brief discussion with Daniel and his mother about returning to school, the officer recorded that Daniel was scared to attend school, but the officer was hopeful that in the future Daniel would return to school.[90] The officer indicated that, before creating a plan, he would wait for the results of a meeting that the school was planning to hold regarding Daniel.[91] However, the officer did not make any attempt to get an update about Daniel's attendance from the school, DCF, Daniel, or Judith.[92]

On December 4, 2001, Judith met with school officials and agreed to the psycho-educational and psychiatric evaluations that the school had requested.[93] However, the tests were never done because Daniel did not return to school after November 28 because Judith allowed him to remain at home for the next three weeks.[94]

Also on December 4, the DCF worker visited Daniel's house.[95] She was informed that Daniel was refusing to return to school because he was "really scared."[96] However, she did get Daniel to agree to consider attending a different school.[97] She told Judith and Daniel that she would bring them material about a different school.[98] She completed a report in which she recorded that Daniel should be transferred to an alternative school.[99] Her report also indicated that while the Scruggs's house was cluttered, the children had proper space and bedding and there was

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[84] *Id.*
[85] *Id.*
[86] *Id.* at 13.
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] *Id.* at 12.
[91] *Id.* at 13.
[92] *Id.*
[93] *Id.* at 13–14.
[94] *Id.* at 14.
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.* at 15.

adequate food in the house.[100] She determined that the allegations of educational and emotional neglect were unsubstantiated.[101] She never fulfilled her promise to provide Judith the material about other schools,[102] and Daniel's case was closed on December 27, 2001.[103]

The night of January 1, 2002, was the night before Daniel's classes were to resume after the holidays.[104] Daniel and Kara had been up late watching a movie, and Judith went to bed early.[105] Kara claimed that the last time she saw Daniel was around three in the morning when she went to bed.[106] The next morning Judith looked in Daniel's room before going to work and noticed that he was not in his bed.[107] She assumed that he was asleep in his closet, which was where he slept and spent most of his time.[108] From work, Judith called the Child Guidance Clinic in order to get Daniel help.[109] Judith returned home around 2:30 p.m., in between her two jobs.[110] Kara had been home all day, but because she had been up late, she had spent most of the day sleeping.[111] Around 3:20 p.m., Judith asked Kara where Daniel was, and Kara went to Daniel's room.[112] Kara found Daniel's body hanging in the closet by a tie that his mother had given him for Christmas.[113]

Kara and her mother contacted the police. Detective Gary Brandl, the lead investigator, was the first to arrive at the scene.[114] He was shocked by the condition of the house.[115] He stated that while its exterior was well kept, the cluttered interior of the house was appalling and unsafe.[116] Detective Brandl was joined by Officer Michael Boothroyd, Crisis Intervention Specialist Pam Kudla, and Medical Examiner Ronald Chase.

These officials described the house as messy and cluttered to the extent that it was difficult to walk.[117] The floors were covered with piles of debris, clothing, junk, and other clutter, and there was only a cramped path about eighteen inches wide between the front door and the kitchen.[118] It

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[100] *Id.* at 14.
[101] *Id.* at 15.
[102] *Id.* at 14.
[103] *Id.* at 15.
[104] *Id.*
[105] O'Neill, *supra* note 11, at A1.
[106] Brandl Aff., *supra* note 36, ¶ 3.
[107] *Id.* ¶ 4.
[108] O'Neill, *supra* note 11, at A1.
[109] CHILD ADVOCATE, *supra* note 2, at 14–15.
[110] Brandl Aff., *supra* note 36, ¶ 4.
[111] *Id.*
[112] *Id.*
[113] *Id.*; O'Neill, *supra* note 11, at A1; *Suicide of a 12-Year-Old*, *supra* note 1.
[114] *Suicide of a 12-Year-Old*, *supra* note 1.
[115] *See id.*
[116] *Id*; Brandl Aff., *supra* note 36, ¶ 7.
[117] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 111 (Conn. Super. Ct. 2004).
[118] *Id.* at 111; Brandl Aff., *supra* note 36, ¶ 7; *Suicide of a 12-Year-Old*, *supra* note 1.

was hard to maneuver and walk without stepping on these items, and one had to watch his or her step in order to avoid falling over.[119] Tables, furniture, chairs, counters, and other flat surfaces were also covered to capacity with items.[120] "For example, atop an ironing board in the living room sat an iron, coffee cup, coffee can with Styrofoam cups atop it, pencil, cellophane tape, socks and other clothing, a book, a roll of paper, and other items."[121] The kitchen did not have a clear space upon which to prepare or consume food.[122] Dirty utensils were on the sink, counters, tables, and floor.[123] There was burned and overcooked food on the stove, and the coffee pot in the coffee maker contained mold.[124] The kitchen had numerous bags of garbage on the floor.[125] The bedrooms had piles of clothing and other matter on the floor.[126] The only clear flat surfaces in the entire house were the three beds.[127] There was dust accumulated on top of the various items.[128]

Daniel's room was no exception. The floor was not visible and there was clothing, bedding, Christmas presents, mirrors, glass items, and other debris piled as high as the bed.[129] The officers had to step on the debris to get to Daniel's body and could hear items cracking under the pile.[130] In the closet, the police found three long kitchen knives and a spear that Daniel had made by attaching a sharp object to a pole.[131] Judith claims that she knew of one of the knives, but not of the others.[132] She claimed that she was "slightly concerned" but justified his possession of the knife because Daniel was afraid because there had been several break-ins in the neighborhood.[133] She did not prohibit him from keeping the knife because she did not think it was harmful as long as he kept it between his mattress and his box spring.[134]

The floor of the bathroom that Daniel and Kara shared was also covered with clothing.[135] One could not walk to the sink, toilet, or bathtub without stepping on the clothing,[136] which was piled high enough that it

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[119] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 111.
[120] *Id.*
[121] *Id.*
[122] Brandl Aff., *supra* note 36, ¶ 7.
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 111.
[128] *Id.*
[129] *Id.*; Brandl Aff., *supra* note 36, ¶ 7; *Suicide of a 12-Year-Old*, *supra* note 1.
[130] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 111.
[131] *Id.* at 110.
[132] *Suicide of a 12-Year-Old*, *supra* note 1.
[133] *Id.*
[134] *Id.*
[135] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 111.
[136] *Id.*

prevented both the cabinet doors under the sink and a door that led to Kara's room from being closed.[137] The bathroom fixtures were dirty.[138] The bottom of the bathtub was soiled.[139] The sink and bathtub walls were filthy.[140] The toilet was soiled, had rust or mineral stains, and was dirty inside and out.[141]

There was an odor in the house which was described differently by the various officials. Crisis Specialist Kudla described the odor as "very foul" and claimed it got worse the further one went inside.[142] Officer Boothroyd described the odor as "definite and offensive" and claimed that it permeated throughout the house.[143] Detective Brandl described the odor as noticeable, like the combination of dirty clothes and garbage, and, like Crisis Specialist Kula, said that it got stronger the further one proceeded through the house.[144] Finally, Medical Examiner Chase described the odor as "slightly offensive" and claimed that he became accustomed to it after being in the home.[145]

II. *STATE V. SCRUGGS*

In April of 2002, four months after Daniel's death, Judith was arrested and charged with one count of cruelty to persons and three counts of risk of injury to a minor.[146] The charge was later amended to one count of cruelty to persons in violation of Connecticut General Statutes Section 53-20,[147] and two counts of risk of injury to a minor in violation of Connecticut General Statutes Section 53-21.[148] The counts for risk of injury were for providing an unhealthy home environment and not providing Daniel with the proper medical and psychological care.[149]

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[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.* at 110.
[143] *Id.*
[144] *Id.*
[145] *Id.* at 110–11.
[146] *Suicide of a 12-Year-Old, supra* note 1.
[147] CONN. GEN. STAT. § 53-20 (2005) states:

> Any person who tortures, torments, cruelly or unlawfully punishes or willfully or negligently deprives any person of necessary food, clothing, shelter or proper physical care; and any person who, having the control and custody of any child under the age of sixteen years, in any capacity whatsoever, maltreats, tortures, overworks, cruelly or unlawfully punishes or willfully or negligently deprives such child of necessary food, clothing, or shelter shall be fined not more than five hundred dollars or imprisoned not more than one year or both.

The statute was amended in 2005.

[148] *See* FOXNews.com—U.S. & World, *Mother Convicted of Contributing to Child's Suicide*, Oct. 6, 2003, *available at* http://www.foxnews.com/story/0,2933,99271,00.html; Santora, *supra* note 10, at B1.

[149] Scarponi, *supra* note 16; *Suicide of a 12-Year-Old*, *supra* note 1.

A six-person jury, consisting of five men and one woman, heard the above facts, and after three days of deliberation, acquitted Judith of all charges except one count of risk of injury to a minor for providing an unhealthy home environment.[150] The risk-of-injury-to-a-minor statute, Connecticut General Statutes Section 53-21(a)(1), under which Judith was convicted, states:

> Any person who (1) willfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child . . . shall be guilty of a class C felony . . . .[151]

Connecticut General Statutes Section 53-21(a)(1) prohibits two types of behavior likely to injure minors. First, it prohibits the deliberate indifference to, acquiescence in, or the creation of situations harmful to a minor's moral or physical welfare.[152] Second, it prohibits acts directed towards minors that are likely to cause harm to the minor's physical or moral well-being.[153] Judith was convicted for violating the first part of the statute, for creating an environment that was likely to cause harm to Daniel's health.[154]

Following the verdict, several jurors spoke with reporters about the case, and their statements suggested that they based their decision on material that should not have been considered. CBS's *60 Minutes II* spoke with four of the six jurors who indicated that the evidence that was influential in their decision were the knives found in Daniel's closet.[155] One of the jurors, Paul Kirschmann stated "[t]his case was whether or not this child was put in a situation where he could harm himself. And I think what our decision was based on was the fact that he slept surrounded by kitchen knives."[156] The jury foreman, Thomas Diaz, told reporters that "[t]hese were not just pocket knives they were talking about. They were pretty big blades."[157] Additionally, Vincent Giardina informed a reporter that "he supported a conviction, in part, because he didn't want Ms. Scruggs to sue the city if she were acquitted,"[158] a subject that should not

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[150] *Suicide of a 12-Year-Old*, *supra* note 1.

[151] CONN. GEN. STAT. § 53-21(a)(1) (2005).

[152] State v. George, 656 A.2d 232, 233 (Conn. App. Ct. 1995) (citing State v. Jones, 29 Conn. App. 683, 687 (1992)).

[153] *Id.*

[154] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 110 (Conn. Super. Ct. 2004).

[155] *Suicide of a 12-Year-Old*, *supra* note 1.

[156] *Id.*

[157] *Judith Scruggs Receives Suspended Sentence*, *supra* note 4.

[158] Neal, *supra* note 10, at A1; Stacey Stowe, *Worth Noting; After the Conviction of a Mother in*

have been considered in determining Judith's guilt.

Judith attempted two appeals to overturn the decision. The basis for the first appeal was that there was insufficient evidence to demonstrate that the house was likely to harm Daniel's mental health because such a finding would require an expert.[159] The second appeal was for juror misconduct and was based on the statements that the jurors made to the reporters.[160] Both attempts were unsuccessful; Judge Stephen Frazzini found that the jurors had sufficient evidence to convict Judith and that the court should not inquire into the juror's mental process or their actual deliberations.[161]

In assessing Judith's claim that there was insufficient evidence to convict Judith, Judge Frazzini had to determine "whether the evidence, viewed most favorably to sustaining the jury's verdict established that the home living environment was likely to injure Daniel's *mental* health."[162] Judge Frazzini found that there was sufficient evidence for the jury to conclude that the house was excessively cluttered and that the bathroom lacked privacy, had little or no clear floor space, and was dirty and unsanitary.[163] The judge also found that evidence of Daniel's truancy, bad hygiene, refusal to improve his hygiene, fear of school that caused him to soil himself, and a fear that lead to him to sleep near knives was sufficient for the jury to determine that Daniel "was in great distress."[164]

Having sufficient evidence to suggest a cluttered home and a distressed child, Judge Frazzini held that the case did not require an expert to determine that the cluttered home could have caused a distressed child emotional harm.[165] He believed the inference was not "beyond the ken of the average juror."[166] He concluded that "[t]he jury could use its everyday knowledge and common sense to conclude that the clutter and squalor throughout the home and lack of privacy in the bath were likely to harm Daniel's mental health, in light of his undisputedly fragile emotional state."[167]

Judge Frazzini also refused to reverse the conviction on the basis of the jurors' statements.[168] He stated that while the court was aware that the jurors had spoken to the media, "[i]n reviewing the sufficiency of the evidence . . . the court does not inquire into the jury's actual deliberations

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Meriden, Some Jurors Speak Out, N.Y. TIMES, Oct 12, 2003, at 14CN.

[159] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 110, 112; *see Judith Scruggs Receives Suspended Sentence*, *supra* note 4.

[160] *Judith Scruggs Receives Suspended Sentence*, *supra* note 4.

[161] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 110, 113 n.3.

[162] *Id.* at 110.

[163] *Id.* at 112.

[164] *Id.*

[165] *Id.*

[166] *Id.* at 113.

[167] *Id.*

[168] *Id.*

or the mental processes . . . ."[169] Judge Frazzini, however, did suggest that if the jury did in fact convict Judith because of the knives and spear that Daniel kept, then the reasons for the conviction were inappropriate. In a footnote, Judge Frazzini explained that "[t]here was no evidence whatsoever, either by direct or circumstantial proof . . . that [the knives and spear] or Daniel's use of them was likely to—i.e., would probably—injure either his mental or physical health."[170]

On May 14, 2004, Judge Frazzini held the sentencing hearing for Judith.[171] While he could have imprisoned Judith for up to ten years,[172] he instead agreed to the prosecution's proposal and gave Judith a suspended eighteen-month prison sentence.[173] Judith was sentenced to five years of probation and was required to undergo counseling and to perform one hundred hours of community service.[174] Additionally, she would have to take parenting classes if she were ever to live again with a child under the age of sixteen.[175]

III. A REVIEW OF CONNECTICUT GENERAL STATUTES SECTION 53-21(a)(1)

Connecticut General Statutes Section 53-21(a)(1) was enacted in 1943. While there is no recorded legislative history, the judiciary has stated that the purpose of the statute is to protect the physical and psychological well-being of children from potentially harmful conduct of adults.[176] Connecticut courts have interpreted the statute broadly and have held that an actual injury to a child's health or morals is not a requirement of the offense, but merely creating or exposing the child to a situation that threatens to, is likely to, or potentially could impair the health or morals of a child is sufficient.[177] Additionally, the courts have interpreted "health" to include mental health.[178]

A broad interpretation of the statute increases the protection it provides children. The statute's inclusion of actions that could potentially harm a child allows a prosecutor to interfere before the child is actually harmed. Furthermore, the fact that the statute can be applied to many different actions allows a jury, or more broadly, public opinion, to determine which

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[169] *Id.* at 113 n.3.
[170] *Id.* at 113 n.1.
[171] *State Not Likely*, *supra* note 14, at A1.
[172] CONN. GEN. STAT. § 53-21(a)(1) (2005); CONN. GEN. STAT. § 53a-35a(6) (2005).
[173] *Judith Scruggs Receives Suspended Sentence*, *supra* note 4; *see* Griffin, *supra* note 11, at 8A.
[174] *Judith Scruggs Receives Suspended Sentence*, *supra* note 4.
[175] *Id.*
[176] State v. Payne, 695 A.2d 525, 528 (Conn. 1997).
[177] State v. Eastwood, 850 A.2d 234, 250 (Conn. App. Ct. 2004); State v. Davila, 816 A.2d 673, 677 (Conn. App. Ct. 2003); State v. Padua, 808 A.2d 361, 370 (Conn. App. Ct. 2002); State v. Hong T., 854 A.2d 827, 832 (Conn. Super. Ct. 2004).
[178] *Payne*, 695 A.2d at 530; *Padua*, 808 A.2d at 370.

actions should be punished rather than require the legislature to foresee and articulate any possible action that might harm a child.

Alternatively, there are risks that come with having a statute that was broadly drafted and is broadly interpreted. For example, the risk-of-injury statute was drafted and interpreted so broadly that it could be argued that a parent who scolds a child in a manner that may make the child cry may violate the statute and subject the parent to punishment for committing a class C felony. The fact that the statute is broad enough to allow prosecutors to charge individuals for acts that the public would not normally consider criminal gives prosecutors a lot of power and discretion when deciding whom to prosecute. The statute's broadness and reliance on the prosecutor's judgment can result in a lack of notice as to what actions are criminal and, therefore, violate due process. Additionally, this may result in the disparate treatment of individuals who are equally culpable. Furthermore, the broadness may increase the likelihood of erroneous verdicts due to juror confusion or juror bias. This section will discuss these concerns using the *Scruggs* case.

A. Scope and Constitutionality of Connecticut General Statutes Section 53-21(a)(1)

A statute violates due process when it is vague enough that a person with ordinary intelligence would not reasonably know what the statute proscribes.[179] The United States Supreme Court has found that the statute must set a standard that establishes a minimum guide for law enforcement.[180] Otherwise, the law would "impermissibly delegate policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."[181]

The way that the statute is used often determines whether the statute is vague. If the state uses the statute only in situations in which the defendant has been given notice that his or her actions are criminal, the fact that the statute's scope is vague is not problematic. However, if the statute were to be used in situations in which an individual did not have proper notice that his or her actions were criminal, then the vagueness would be problematic, and the statute should be found unconstitutionally vague.

Historically, the decisions of Connecticut courts suggest that the majority of convictions under the risk-of-injury statute occur in conjunction with convictions of other crimes.[182] The most frequent use of

[179] State v. Schriver, 542 A.2d 686, 688 (Conn. 1988) (quoting McKinney v. Coventry, 176 Conn. 613, 618 (1979)).

[180] *Id.* (citing Kolender v. Lawton, 461 U.S. 352, 357–58 (1983)).

[181] *Id.* (quoting Grayned v. Rockford, 408 U.S. 104, 108–09 (1972)).

[182] A review of Connecticut Court records suggests that CONN. GEN. STAT. § 53-21(a)(1) has

the statute has been in conjunction with sexual assault, aggravated sexual assault, and sexual abuse.[183] The second-most frequent use of the statute is in conjunction with abuse, assault and aggravated assault charges.[184]

Additionally, Connecticut's risk-of-injury statute has been used with charges for manslaughter,[185] robbery,[186] drug possession and use,[187] kidnapping and attempted kidnapping,[188] cruelty to persons,[189] public indecency,[190] and once in conjunction with a charge of neglecting to restrain an animal from doing injury to another animal.[191]

When the risk-of-injury statute is used concomitant with other charges, as in the situations above, there is little risk of punishing an individual for behavior that is not presumed to be criminal; the other statute upon which a charge is based provides the notice that the behavior is criminal. The concern for lack of notice arises only when the risk-of-injury statute is the only charge for which a person is charged or convicted. Discounting plea bargains and the *Scruggs* case, this has occurred only four times in Connecticut's recorded history.

In 1988, Dale Schriver was convicted for risk of injury to a minor for grabbing a thirteen-year-old girl by the waist while she was delivering papers.[192] He approached her and asked if she had an extra paper.[193] When she answered that she did not, he grabbed her by the waist and replied "[d]on't worry, all I want to do is feel you."[194] She screamed, and he

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resulted in about 600 convictions.

[183] CONN. GEN. STAT. § 53-21(a)(1) has been used for this purpose about 500 times.

[184] CONN. GEN. STAT. § 53-21(a)(1) has been used in this manner about seventy times.

[185] *E.g.,* State v. Jenkins, 856 A.2d 383, 383–87 (Conn. App. Ct. 2004) (convicting Jenkins for manslaughter and risk of injury to a child for striking and killing his girlfriend's twenty-three-month-old child).

[186] *E.g.,* State v. Reid, 858 A.2d 892, 894–97 (Conn. App. Ct. 2004) (convicting Reid for first degree robbery and conspiracy to commit robbery for using a shotgun while robbing a house in which a three-year-old child was present).

[187] *E.g.*, State v. Smith, 869 A.2d 171, 173 (Conn. 2005) (convicting Smith for drug possession and risk of injury to a minor after police entered his apartment and found Smith on a bed in a semi-conscious state with an infant sitting behind him and crack cocaine found in tinfoil on the bed).

[188] *E.g.,* State v. Eastwood, 850 A.2d 234, 238–39 (Conn. App. Ct. 2004) (convicting Eastwood of attempted kidnapping and risk of injury to a minor when he repeatedly tried to lure three young boys into his van that contained a mattress in the back).

[189] State v. Palozie, 334 A.2d 468, 470–71 (Conn. 1973) (convicting Palozie for cruelty to persons and risk of injury to a child for "strapping" his son when the nurse found excessive bruising on the child's back, buttocks, and legs. After the arrest, the child was found with additional bruises and claimed that Palozie had attacked him for "squealing").

[190] State v. Cutro, 657 A.2d 239, 240–41 (Conn. App. Ct. 1995) (convicting Cutro of public indecency and risk of injury to a minor for masturbating in a car in a mall parking lot).

[191] State v. Doriss, 854 A.2d 48, 49 n.1 (Conn. App. Ct. 2004) (charging Doriss of risk of injury to a minor and failure to properly contain an animal for holding the arms of a pit bull that belonged to a minor and allowing his Rottweiler and his other dogs to brutally attack the pit bull).

[192] State v. Schriver, 542 A.2d 686, 687 (Conn. 1988).

[193] *Id.*

[194] *Id*.

fled.[195] He was sentenced to seven years in prison.[196]

In 1991, David Palangio was convicted for three counts of risk of injury to a minor for taking semi-nude pictures of three of his son's female friends. [197] He provided the girls, who were all under the age of sixteen, with various pieces of clothing and undergarments and took provocative pictures of them.[198] He told them that he would put the pictures in a folder for them to use as a modeling portfolio.[199] He was sentenced to two concurrent terms of ten years, a consecutive term of ten years with execution suspended, and five years probation.[200]

In 1995, Samuel George was convicted of risk-of-injury for leaving his seventeen-month-old infant unattended.[201] A police officer found the infant left unattended in a car in a parking lot.[202] When George returned to the car, he admitted that the child was his.[203] The police officer warned him not to leave the infant unattended because he could be subject to arrest.[204] Later, the officer responded to a call stating that the infant had been left in George's car at a bar in East Hartford.[205] The officer found the car, but it was empty.[206] The officer questioned George and learned that the infant was at George's home unattended.[207] Other officers found the child in the apartment, and the defendant was arrested and convicted for risk of injury to a minor.[208]

Finally, in 1995, Christina Shaw was charged with risk of injury to a minor for storing sexually explicit material in her bedroom in an unlocked cabinet.[209] Her eleven-year-old son would view the materials when his mother was occupied.[210] The risk-of-injury-to-a-minor charge was brought because she negligently stored the material allowing her son access to material which, when viewed, could impair his morals.[211]

All four of these defendants challenged the statute for vagueness. In order to succeed on a vagueness challenge, the defendant bears the heavy burden of demonstrating beyond a reasonable doubt that a person of

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[195] *Id.*
[196] *Id.*
[197] State v. Palangio, 588 A.2d 644, 645 (Conn. App. Ct. 1991).
[198] *Id.*
[199] *Id.*
[200] State v. Palangio, Nos. CR4-148014, CR4-414746, 1992 WL 228101, at *1 (Conn. Super. Ct. July 28, 1992).
[201] State v. George, 656 A.2d 232, 233 (Conn. App. Ct. 1995).
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] State v. Anonymous, 15 Conn. L. Rptr. No. 12 405, 405 (Conn. Super. Ct. 1995).
[210] *Id.*
[211] *Id.*

ordinary intelligence would not have reasonable opportunity to determine whether an action would be permitted or prohibited.[212] Connecticut courts have held that although the risk-of-injury statute does not have to provide notice to the defendant, notice can be provided by judicial opinions involving the statute, common law, legal dictionaries, treatises,[213] warnings from state actors,[214] and common sense.[215]

Schriver succeeded in his vagueness appeal because the courts found that previous decisions suggested any sexually suggestive conduct directly perpetrated on a minor that is likely to impair his or her morals had to involve touching the child's private area.[216] Therefore, there was not sufficient warning to suggest that the defendant's behavior—grabbing the girl by the waist—was prohibited because the defendant's actions did not involve touching private areas.[217] About six years after *Schriver*, in 1995, the risk-of-injury statute was amended.[218] Since *Schriver*, courts have held that a person does not have to touch the child to harm the morals of a child under Connecticut's risk-of-injury statute,[219] and courts have subsequently been more reluctant to find the statute vague.[220]

In *State v. Shaw,* the court dismissed the risk-of-injury charge on other grounds, and the court did not analyze the vagueness claim.[221] However, the court did state in a footnote that in light of recent decisions—which had all upheld the risk-of-injury statute against attacks for vagueness—a constitutional attack likely would not succeed.[222]

Neither Palangio nor George succeeded on their vagueness appeals.[223] The appellate court found that Palangio had fair notice that his actions were prohibited because courts have held that one did not have to physically touch a child to violate Connecticut's risk-of-injury statute, and that the photographing of nude and seminude children was prohibited.[224] George did not succeed in his appeal because the court found that he had

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[212] State v. Payne, 695 A.2d 525, 530–31 (Conn. 1997).

[213] *Id.* at 531.

[214] State v. George, 656 A.2d 232, 233 (Conn. App. Ct. 1995).

[215] State v. Erzen, 617 A.2d 177, 179–80 (Conn. App. Ct. 1992).

[216] State v. Schriver, 542 A.2d 686, 690–91(Conn. 1988).

[217] *Id.* at 690.

[218] An Act Concerning Sexual Offenders and the Penalty for the Assault or Sexual Assault of Children, 1995 Conn. Legis. Serv. P.A. 95-142 (1995).

[219] *See* State v. Payne, 240 Conn. 766, 774 (1997).

[220] *See* State v. Anonymous, 15 Conn. L. Rptr. No. 12 405, 407 n.8 (Conn. Super. Ct. 1995).

[221] *Id.* at 406 (overturning the conviction because she did not have the mental state required for conviction). The court found that Shaw had not "willfully or unlawfully" created a harmful situation, but had just negligently stored sexually explicit material. *Id.*

[222] *Id.* at 407 n.8 ("It is very unlikely . . . the constitutional claims would succeed in light of State v. George, 37 Conn. App. 388 (1995), and State v. Perrucio, 192 Conn. 154 (1984), both of which support the constitutionality of § 53-21.").

[223] State v. Palangio, 588 A.2d 644, 646 (Conn. App. Ct. 1991); State v. George, 656 A.2d 232, 234 (Conn. App. Ct. 1995).

[224] *Palangio*, 588 A.2d at 646.

fair notice that his actions were prohibited because a police officer had told him so three hours before he was arrested.[225]

Like the four defendants above, Judith's lack of housecleaning did not violate a statute other than the risk-of-injury-to-a-minor statute. Her actions were not independently criminal, and they were only considered so because a child may have been harmed by her action. Judith did not challenge the statute for vagueness despite the fact that she may have had a strong claim. Because she was convicted for providing a home environment that could have harmed Daniel's mental health, a vagueness appeal would ask whether a person of ordinary intelligence would have had a reasonable opportunity to determine that keeping a house in the condition that she did was prohibited.

The risk-of-injury statute does not mention homes or cleanliness, nor does any judicial opinion that involves the statute. The state might argue that the general requirement that guardians must provide their children with adequate shelter and provide for a child's physical and emotional needs was sufficient to have given Judith notice that the condition in which she kept her house was unlawful. The state, like Judge Frazzini's opinion, would suggest that Judith had knowledge that her actions were criminal because common sense would suggest that the conditions were unacceptable.[226]

Judith could respond to the state's argument that the general requirements of parenting provided her notice that the condition of her house was unacceptable by arguing that proper notice was not provided because the standards of an "adequate shelter" are neither clear nor properly articulated. She could argue that common sense should not be sufficient to provide notice because it allows police officers and jurors to subjectively determine culpability without the defendant having proper warning that his or her actions were proscribed, which is precisely what due process forbids.[227]

Additionally, Judith might be able to convince the court that the state's involvement in her household and its failure to warn her that the conditions of her house violated the law would lead a reasonably intelligent person to believe that the condition was permitted by law. In making this argument, she could distinguish herself from the defendant in *George*. She could argue that, like George, Judith had a state agent observe the behavior before the arrest—the same behavior that later lead to the arrest. In both

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[225] *George*, 656 A.2d at 234.

[226] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 113 (Conn. Super. Ct. 2004) ("The jury could uses its everyday knowledge and common sense to conclude that the clutter and squalor throughout the home and lack of privacy in the bath were likely to harm Daniel's mental health, in light of his undisputedly fragile emotional state.").

[227] *See* State v. Schriver, 542 A.2d 686, 688 (Conn. 1988).

instances, the state agent was an individual who is presumed to be informed of the law and whose profession includes determining acceptable behavior from unacceptable behavior. Yet unlike the police officer's warning in *George*, the DCF worker had observed Judith's house,[228] did not warn Judith that the conditions of her house were proscribed by law, and subsequently closed the two-month investigation. The lack of warning suggests that the state implicitly, if not explicitly, approved of the condition of the house. Because Judith had no other notice and because the state appeared to be condoning her behavior, she could argue that the state representatives ratified her behavior.

Even if Judith's arguments are persuasive, she would be fighting a heavy presumption of constitutionality and would have to persuade the court to rule that the statute is vague, which Connecticut courts had recently been reluctant to do. Judith would have the "heavy burden of proving [the statute's] unconstitutionality beyond a reasonable doubt and [the court] indulge[s] in every presumption in favor of the statute's constitutionality."[229] Given the courts' recent move away from the *Schriver* decision and towards decisions similar to *Palangio* and *Shaw*, the vagueness appeal has become quite burdensome on defendants and has not been successful.

While the historical use of the risk-of-injury statute suggests that the statute is normally used in conjunction with other charges that suggest the action is independently considered criminal, prosecutors are not limited to charging individuals for behavior that is independently considered criminal, and they have done so on several occasions.[230] Because the public is not always given notice as to what actions are proscribed, the concern that risk-of-injury charges may violate due process is validated. Finally, this concern is amplified by the fact that Connecticut courts have been reluctant to consider the statute unconstitutionally vague and have found that common sense was enough to provide notice that behavior is criminal.[231]

B. Prosecutors' Discretion Using Connecticut General Statutes Section 53-21(a)(1)

This section will address the concern that the broadness of the statute allows prosecutors too much discretion in deciding whom to charge, which

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[228] *See* CHILD ADVOCATE, *supra* note 2, at 14.

[229] State v. Payne, 695 A.2d 525, 530–31 (Conn. 1997).

[230] It is also important to note that the above analysis may not accurately reflect the extent to which these cases occur. The analysis was limited to Connecticut's recorded history and may not reflect acquittals or convictions that were not appealed, and it may be possible that prosecutors are charging individuals for behavior that is not considered criminal more often than the record reflects.

[231] State v. Erzen, 617 A.2d 177, 180 (Conn. App. Ct. 1992).

may result in people who are equally culpable being treated differently. This section will review the decision to prosecute Judith and the decision not to charge other individuals whose actions made them liable under Connecticut's risk-of-injury statute.

1. The Decision to Charge Judith

Many criticized the prosecutor, Senior Assistant State's Attorney James Dinnan, for bringing the case against Judith. There were protests outside of the courthouse[232] and comments to the media about his wrongfully charging a grieving mother who was herself a victim.[233] In January of 2004, two parent advocacy groups accused Dinnan of intentionally filing "bogus charges" against Judith and have filed a grievance against Dinnan with the statewide bar counsel.[234]

Dinnan claimed to have brought the risk-of-injury charges against Judith because he believed that parents have the ultimate responsibility for their children and are responsible for ensuring that their basic medical, emotional, and psychological needs are met.[235]

Dinnan charged Judith with risk of injury to a minor for not providing proper medical and psychological care because, despite the fact that Daniel had many symptoms of a psychological disorder, Judith took little action. Judith was aware that Daniel lacked motivation, was not completing his assignments, was soiling himself, was having trouble relating to his peers, and was irritable.[236] She suspected that Daniel may have been depressed due to the recent death of his grandparents.[237] Additionally, the school officials and the DCF social worker had suggested on multiple occasions beginning ten months before Daniel's death that there may be something psychologically wrong with Daniel and that he might benefit from counseling.[238] Yet there was no record that Judith took Daniel to a doctor or therapist of any kind for an evaluation.[239] While she allowed the school to conduct psychological tests on Daniel on December 4, she prevented this from happening by allowing Daniel to stay home from school.[240] It was not until the morning of Daniel's death that she phoned the Child Guidance Clinic.[241]

Judith explained that she did not contact the Clinic earlier because

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[232] Griffin, *supra* note 11, at A8.
[233] *Id.*; Connor, *supra* note 14, at 10.
[234] *Scruggs Prosecutor Grieved*, CONN. L. TRIB., Jan. 19, 2004, at 9.
[235] Scarponi, *supra* note 16; *State Not Likely*, *supra* note 14, at A1.
[236] *See* Brandl Aff., *supra* note 36, ¶¶ 17–18.
[237] CHILD ADVOCATE, *supra* note 2, at 11.
[238] *See* Brandl Aff., *supra* note 36, ¶¶ 12, 16, 19, 22; *see* CHILD ADVOCATE, *supra* note 2, at 8–10; *see Suicide of a 12-Year-Old*, *supra* note 1.
[239] CHILD ADVOCATE, *supra* note 2, at 22.
[240] *Id.* at 13–14.
[241] *Suicide of a 12-Year-Old*, *supra* note 1.

Daniel said he would not go, and she did not feel that he needed counseling.[242] Instead, she believed that he needed to get away from the bullies, and after that occurred she would determine if he needed counseling.[243]

Judith also failed to contact the urologist in response to Daniel's continued soiling himself despite the fact that she was instructed to do so.[244] She has not publicly addressed this, but reports suggest that she did not seek treatment for Daniel because she believed that he was intentionally soiling himself to get out of school.[245]

Dinnan brought the risk-of-injury charge because Judith failed to provide a healthy living environment. Despite the fact that Judith was aware of Daniel's extreme hygiene problems, she not only did little to remedy the situation, but also hindered any improvement by not providing a home that facilitated good hygiene practices.[246] Further, even though Judith was aware that Daniel had severe hygiene problems, she did not force him to clean himself.[247] In her *60 Minutes II* interview, she told the reporter "[p]eople say, 'why didn't you make him wash.' He's 12 years old. I'm not going to stand over a 12 year-old [sic], make sure he gets in the tub. He's not 2 or 3."[248] Indeed, the state believed that Daniel could not have showered even if he wanted to because the bathroom lacked privacy, was filthy, and the tub was filled with toys and clothes.[249] Additionally, the excessive clutter was considered evidence that there were not clean clothes or clean sheets available to Daniel.[250]

Detective Brandl emphasized that the case was not about Daniel's death, but rather Daniel's life.[251] Judge Frazzini also emphasized this distinction and stated

> [t]he crime being prosecuted here was creating or maintaining a situation that endangered the child's emotional health. The defendant was not charged with causing the child's suicide. . . . The same violation, creating and maintaining a situation that endangered the child's emotional health would have existed even had the child *not* committed

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[242] *Id.*
[243] *Id.*
[244] Brandl Aff., *supra* note 36, ¶ 15; CHILD ADVOCATE, *supra* note 2, at 5.
[245] Posting of Teresa to J. Daniel Scruggs, http://nielsenhayden.com/makinglight/archives003756.html (Oct. 8, 2003, 12:00 p.m.).
[246] *See* State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 112 (Conn. Super. Ct. 2004).
[247] *See Suicide of a 12-Year-Old*, *supra* note 1.
[248] *Id.*
[249] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 112; CHILD ADVOCATE, *supra* note 2, at 30, 36.
[250] CHILD ADVOCATE, *supra* note 2, at 36.
[251] *Suicide of a 12-Year-Old*, *supra* note 1.

suicide.[252]

Judge Frazzini and Detective Brandl's statements are very misleading. While it may be true that Judith was not charged with causing Daniel's death and that the violation would have existed had Daniel not committed suicide, it is also true that if it were not for Daniel's suicide, Judith would probably not have been prosecuted. It is not Connecticut's policy to charge parents that live in messy homes with risk of injury to a minor, but rather to remove the child from the home if the house is found to be a danger to the child.[253] If a police officer, social worker, or school official had made the determination prior to Daniel's suicide that the conditions of the house created a dangerous situation for Daniel, as a mandated reporter, that individual would have had to make a referral to DCF for investigation.[254] If the social worker agreed that Daniel's house was dangerous, unsafe, or that his needs were not met, the DCF policy manual suggested that appropriate action would have been to consider removing Daniel from the home[255] rather than charging Judith with a crime.

Admittedly, the fact that a statute is not normally used in a certain manner does not mean that it should never be used that way. However, because *Scruggs* sets precedent that a parent can be criminally charged for keeping a messy house if the mess is likely to cause the child emotional or physical harm,[256] it should be considered whether criminal prosecution makes sense and whether it is an appropriate alternative to the common procedure of removing a child from the home.

Criminal charges have probably not traditionally been brought in response to a messy house because of the state's strong interest in keeping families united.[257] DCF's manual suggests that a child should be kept with his or her parent unless the child is in danger.[258] If a child is removed, then DCF is to work with the parent to promptly remedy the situation so that the child can be returned to the family as quickly as possible.[259] Bringing criminal charges against a parent would hinder this goal because it would

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[252] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 113 n.2.

[253] *See* REASONABLE EFFORTS BEFORE FILING A PETITION, CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES POLICY MANUAL, 46-3-12, *available at* http://www.state.ct.us/def/policy/court46/46-3-12.htm (suggesting that the investigator should take reasonable efforts to resolve problems while maintaining the child in the house, but if this is not possible then the child may be temporarily removed.).

[254] CHILD ADVOCATE, *supra* note 2, at 19.

[255] STANDARDS FOR REMOVAL, CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES POLICY MANUAL, 34-10-3, *available at* http://www.state.ct.us/def/policy/invest34/34-10-3.htm.

[256] Neal, *supra* note 10, at A1.

[257] SERVICES TO PREVENT OUT-OF-HOME PLACEMENT AND FACILITATE REUNIFICATION, CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES POLICY MANUAL, 34-9, *available at* http://www.state.ct.us/def/policy/invest34/34-9.htm.

[258] *Id.*

[259] *Id.*

divert the parent's time and energy away from remedying the situation and towards defending him- or herself. Additionally, the penalty for risk of injury to a child could result in up to ten years imprisonment.[260] Any prison time received by a parent would further delay the family's reunification.

The traditional concern for keeping a family intact is not present when a child commits suicide. Therefore, there may be justification for treating a parent differently after the suicide of the child. However, this is only true if the child who committed suicide was the only child living in the house. If there are other children in the house, there remains an interest in keeping the remaining family intact. The appropriate method of punishing the mother should consider the remaining children's needs and whether they are in danger.

The second precedent that *Scruggs* sets—that a parent can be charged with risk of injury to a minor after a child's suicide—is troubling because the decision whether to charge the parent is distorted by hindsight.[261] The police officers involved in the Scruggs case conducted their investigation and analysis with the knowledge of Daniel's suicide. They started with the ultimate evidence of emotional harm—the suicide—and then learned the details of Daniel's chaotic life. Reviewing the facts in this order may affect the decision whether to prosecute. The knowledge of Daniel's suicide may have overemphasized the obviousness of Daniel's emotional distress and the foreseeability of his suicide. With hindsight it becomes quite apparent what should have been done, and it is easy to suggest that everyone who took part in Daniel's life, including the school officials, state officials, his family, and peers, performed their roles incompetently. This leaves one confused as to how everybody failed to protect Daniel, were so tolerant of his mistreatment, and, therefore, participated in harming him.

Yet the fact remains that there were countless individuals who were involved in Daniel's life who did not recognize the severity of the situation. Without the benefit of hindsight, it is extremely difficult to accurately assess a person's emotional state and the risk of harm one may pose to him- or herself. Not only were the individuals in Daniel's life acting without the benefit of hindsight, but the problems with Daniel that they did recognize, they believed to be out of their control. For example, the school officials recognized Daniel was picked on, and they attributed this to his bad hygiene, but they could not bathe Daniel. Judith saw a kid with bad hygiene because he did not want to go to school, yet she could not change how he was treated at school. The DCF social worker only recognized Daniel's educational neglect as a problem and was aware that

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[260] CONN. GEN. STAT. § 53-21(a)(1) (2005); CONN. GEN. STAT. § 53a-35a(6) (2005).
[261] *See Suicide of a 12-Year-Old*, *supra* note 1.

Daniel had been assigned a truancy officer. The truancy officer was unaware of the severity of Daniel's problems because the procedure that existed at the time did not involve an investigation beyond what Daniel revealed to him.

Given the difficulty of recognizing distress, it should be considered whether it is appropriate to charge a parent with risk of injury after his or her child commits suicide. It could be argued that doing so would do nothing more than subject a parent's behavior to scrutiny, unfairly armed with hindsight's clarity.[262] After any child commits suicide, hindsight is likely to suggest that a parent willfully allowed the child to be placed in a situation in which the child's physical or emotional health could have been harmed. This is especially the case when considering the fact that the assessment of the risk to the child considers the specific characteristics of the child and his or her emotional state. At the very least, any parent whose child commits suicide could be charged with the second risk-of-injury charge, which Judith was charged with—risk of injury to a minor for not providing the proper medical and psychological care. Furthermore, allowing such scrutiny would be especially harmful for those with cultural differences and economic hardships.

Another concern with allowing the charge after a suicide is that the charge serves no purpose. The statute's purpose is to protect children, and it must be considered if bringing such a charge will attain this goal. The charge cannot benefit the child who has died, so to fulfill its purpose, the charge would have to help other children directly or indirectly. Bringing the charge could directly help other children who are thought to be endangered by the defendant's actions by removing the children from the dangerous situation. For example, if Daniel had a younger sibling who had an emotional state similar to Daniel's, then bringing the charge might benefit this sibling. The charge might indirectly help other children by, as Dinnan intended, sending a message to parents that they are responsible for their children[263] and should take that responsibility seriously and act diligently to ensure that their children are safe.

Yet these justifications are not persuasive. If there were another child in the situation who could be harmed—and it is determined that bringing a criminal charge against the mother is more appropriate than removing the child—then perhaps the charge that should be brought would be for risk of injury to the second child. Secondly, the fact that the charge sends a message to other parents may be beneficial, but this does not seem like an appropriate use of the penal system. The system should not deprive a person of their freedom for the purpose of sending a message. The fact

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[262] *Id.*

[263] *See* Santora, *supra* note 10, at B1.

that the community may learn from a defendant's charge is a secondary benefit of the system but should not be its primary purpose. Furthermore, the message may be received with only the news of the suicide and the story of the child's situation.

Another reason that might be suggested for bringing the charge is to punish the mother for her actions. This is a justifiable reason for bringing the charge; however, the broadness of the statute complicates matters. The statute does not distinguish between those actions that caused harm and those that only created a risk of harm. In general, not distinguishing between the two helps the state protect children because it places the emphasis on the risk of the behavior instead of the behavior's result. Yet after the child has passed away it would seem odd to punish a parent from putting the child in a situation that could have harmed the child but did not. Additionally, it would seem odd to punish a parent for putting the child in a situation that only slightly harmed the child. Finally, it would be been seen even stranger if this harm were in no way related to the child's death.

For example, in Daniel's case, it would have seemed odd if the state had brought a charge against Judith for allowing Daniel to sleep near knives. The charge would still be bizarre even if, one night, Daniel had rolled over and nicked his hand on one of the knives. Although Judith could be considered to have willfully placed Daniel in a situation in which he was harmed, the harm was so slight and in no way related to his death that the matter seems trivial and unworthy of prosecution. Alternatively, had Judith allowed this behavior, and had Daniel died due to a knife injury caused when he rolled over onto a knife in his sleep, then the idea of punishing Judith might be more appropriate. However, because the statute does not consider actual harm relevant, the court did not consider whether Judith's actions actually harmed Daniel, and if so, to what extent.

It appears as if Prosecutor Dinnan charged Judith because he believed that Judith's actions caused harm to Daniel. However, the statute that he used to bring the charge was not concerned with whether Judith caused any harm to Daniel, but rather whether Judith's behavior could have caused Daniel harm. The jury's decision did not validate Prosecutor Dinnan's belief that Judith's actions harmed Daniel but only answered the legal question of whether Judith's lack of housekeeping could have harmed Daniel. This created a discrepancy between what was apparently intended in charging Judith and what actually resulted because of the charge.

2. The Decision Not to Charge Others

Those critical of punishing Judith suggest that the school officials involved in Daniel's life are more deserving of punishment than Judith.[264]

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[264] *E.g.,* Posting of Robert L. to J. Daniel Scruggs, http://nielsenhayden.com/makinglight/archives

These critics point out that no matter how squalid or cluttered the court found the house, the facts support the idea that Daniel enjoyed being home and considered it a haven from the bullies he encountered at school.[265] They suggest that there is no evidence that Daniel ever ran away from home or showed any indication that he did not want to be there; in fact, he willfully remained there when he stayed home from school unsupervised.[266] These critics claim his bad hygiene was a result of his attempts to avoid school and was not Judith's fault.[267]

Alternatively, Daniel tried to avoid school as often as possible.[268] Daniel told everyone with whom he came into contact that he did not like school, was picked on there, and was afraid to go.[269] Reports by students and teachers suggest that he was picked on daily and that teachers did not always intervene.[270] School officials admitted to knowing that Daniel was being picked on, but many of them ignored the situation or did not know how to handle the taunting because they believed that Daniel brought it on himself.[271] They understood when children did not want to sit by him or interact with him because of his strong odor.[272] They ultimately accepted the children's behavior towards Daniel.[273] Ultimately, he committed suicide the night before he was to return to school,[274] not on the first day of the holiday break.

While parents are ultimately responsible for their children, Connecticut law has created additional laws to ensure that children are protected.[275] Connecticut General Statutes Section 17a-3 established the DCF to ensure that parents protect and care for their children and make extra familial resources available when they are needed.[276] Additionally, Connecticut General Statutes Section 17a-101 mandates that certain professionals must report to the DCF any suspicion that a child under the age of eighteen has been abused, neglected, or is in imminent risk of harm.[277] The list of mandated reporters includes school teachers, principals, guidance

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/003756.html (Oct. 8, 2003, 12:46 p.m.).

[265] Posting of Old Soul Flame to http://nielsenhayden.com/makinglight/archives/003756.html (Jan. 28, 2004, 17:07).

[266] *See* Posting of Teresa Nielsen Hayden to J. Daniel Scruggs, http://nielsenhayden.com/makinglight/archives/003756.html (Oct. 9, 2003, 4:26 p.m.).

[267] *Id.*

[268] *Id.*

[269] CHILD ADVOCATE, *supra* note 2, at 17, 25; O'Neill, *supra* note 12, at A1.

[270] CHILD ADVOCATE, *supra* note 2, at 17, 25.

[271] *Id.* at 17.

[272] *Id.*

[273] *Id.*

[274] CHILD ADVOCATE, *supra* note 2, at 15.

[275] *Id.* at 19.

[276] *Id.*

[277] *Id.*

counselors, social workers, and nurses.[278] This system of protection that Connecticut established utterly failed to help Daniel.

The state officials involved in Daniel's life failed to meet their obligations to Daniel, in the same way that Judith was accused of failing Daniel. Like Judith, these officials violated Connecticut's risk-of-injury law by willfully permitting Daniel to be placed in a situation in which his health or morals were likely to be impaired.

If we believe the state's claim that Judith's house was harmful to Daniel, the acts of the DCF worker met the criteria of Connecticut's risk-of-injury statute. She was aware of Daniel's emotional state when he refused to attend class, had horrible hygiene, soiled himself, and refused counseling. The DCF worker was also aware of the Scruggs's living conditions because she had taken a tour of their house.[279] By finding Daniel's living conditions satisfactory, she willfully permitted Daniel to be placed in a situation in which his life was endangered, and she put him in a situation that was likely to impair his health or morals.

If we accept the fact that Daniel's school day consisted of mental and physical abuse, then the school officials, truancy officer, and DCF worker are all liable for willfully placing Daniel in a situation in which his life and health were endangered. The teachers were aware of the behavior of Daniel's tormentors but did little to stop them.[280] The truancy officer was aware that Daniel was teased at school but nonetheless encouraged Daniel to attend school.[281] The DCF agent believed that Daniel was scared to attend school to the point that he was soiling himself to avoid attending, yet encouraged him to go and failed to provide Judith with information about alternative schools for Daniel to attend.[282]

Not only did these individuals violate the same statue as Judith, but many of the same justifications present for charging Judith justify charging these individuals. Like Judith, they were responsible for keeping children safe and failed to fulfill their obligation. Punishing them could send a message to the community regarding what behavior is acceptable and expected in order to ensure that children would be better protected. Detective Brandl and Judge Frazzini's argument that the punishment would not be for causing Daniel's death, but for creating and maintaining dangerous conditions when he was alive would also apply.

Alternatively, the same reasons for not punishing Judith exist for not punishing the school officials. This kind of risk may be very difficult to detect, and criminal trials might just subject individuals to scrutiny, armed

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[278] CONN. GEN. STAT. § 17a-101 (2005).
[279] *See* CHILD ADVOCATE, *supra* note 2, at 14.
[280] *Suicide of a 12-Year-Old*, *supra* note 1.
[281] CHILD ADVOCATE, *supra* note 2, at 12, 25.
[282] *Id.* at 14, 25.

with the knowledge of hindsight. The message was sent to the community and to professionals in relevant fields without a charge being brought, for Connecticut passed new laws requiring schools to maintain active anti-bullying policies and to log and report all bullying incidents.[283] Additionally, both the Office of the Child Advocate and the Child Fatality Review Panel have done internal investigations to determine how the state agencies and school officials were ineffective and to suggest improvements that should be made to help prevent another incident like Daniel's from occurring. Finally, there are other procedures in place for punishing state workers' poor job performance that have stronger public policy rationales.[284]

Despite the fact that many individuals could have been charged under the statute for similar reasons, only Judith was charged. Regardless of whether any of the individuals should have been charged, reason suggests that they should have been treated similarly.

C. Juror Confusion

A third problem with such a broad statute is that jurors may get confused and convict an individual based on evidence that is not relevant to the specific charge. The jurors' statements to the press following Judith's conviction suggest this is precisely what happened.

Judge Frazzini's opinion clearly indicated that the question that the jury was to answer was whether the condition of Judith's home between August 1, 2001 and January 2, 2002 was likely to injure Daniel's *mental* health.[285] Judge Frazzini believed that there was no evidence that Judith's actions were likely to harm Daniel's physical health:

> [t]here was no evidence whatsoever . . . that [the knives and home-made spear] or Daniel's use of them was likely—i.e., would probably—injure either his mental or physical health . . . . There was also no evidence that the cluttered living conditions or unsanitary bathroom fixtures were likely to injure a child's physical health.[286]

However, in their interviews with *60 Minutes II*, four of the six jurors suggested that it was the evidence of the knives that was influential to their decision.[287]

The danger of this confusion is compounded by the fact that it cannot be undone. The decisions of courts demonstrate that they have a strong

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[283] Griffin, *supra* note 11, at A8.
[284] *See* CHILD ADVOCATE, *supra* note 2.
[285] State v. Scruggs, 37 Conn. L. Rptr. No. 3 109, 110 (Conn. Super. Ct. 2004).
[286] *Id.* at 110, 113 n.1.
[287] *Suicide of a 12-Year-Old*, *supra* note 1.

preference for permanency and do not like to overturn decisions.[288] Although Judith appealed because of the jurors' confusion, Judge Frazzini stated that

> [t]he court is aware . . . that after the verdict certain jurors spoke to the news media about their verdict. In reviewing the sufficiency of the evidence, however, the court does not inquire into the jury's actual deliberations or mental processes . . . . How the jury actually viewed the evidence is not for the court to consider on the present motions.[289]

There is evidence to suggest that the jurors in the *Scruggs* case were confused as to their task and convicted Judith for reasons that the judge admitted were unacceptable. This suggests that juror confusion is a legitimate concern for cases concerning broad risk-of-injury statutes.

D. Juror Bias

A statute that allows a variety of actions to be considered criminal and leaves the determination of guilt to a jury may result in a verdict that is tainted by jury bias. This bias can occur consciously or subconsciously.

There is some evidence that one juror's conscious bias against Judith was influential in his decision to convict Judith. In post-conviction interviews, one juror, Vincent Giardina informed reporters that "he supported a conviction, in part, because he didn't want Ms. Scruggs to sue the city if she were acquitted"[290] and because he did not want her benefiting from her son's suicide.[291] The juror foreman later admitted that while a statement of this effect was mentioned in deliberations, it was said towards the very end of deliberations, was only in passing, and was quickly dismissed.[292] Juror Giardina's concern, however, should not have been a consideration in determining the guilt of Judith.

There is also concern that subconscious bias may have affected Judith's verdict. Subconscious bias is even more problematic than conscious bias because it is harder to determine if it exists. Cheryl Meyer, a psychology professor at Wright State University and the author of

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[288] State v. Scruggs, No. CR020210921S, 2004 WL 1245581, *3 (Conn. Super. Ct. March 8, 2004) ("Upon an inquiry into the validity of a verdict, no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of the juror nor any evidence concerning mental processes by which the verdict was determined. . . . The rule is grounded in both the need to create and protect an environment in which jurors may engage in free and full debate on the issues of a case as well as the interests of finality.").

[289] *Scruggs*, 37 Conn. L. Rptr. No. 3 at 113 n.3.

[290] *Scruggs*, 2004 WL 1245581, at *1 n.2; Stowe, *supra* note 158, at CN14.

[291] *Scruggs*, 2004 WL 1245581, at *1 n.2.

[292] *Id.*

Mothers Who Kill Their Children,[293] claims that society's construction of motherhood includes the notion that mothers are responsible for things that happen to their children.[294] She has interviewed many women who were convicted of various charges after their children's deaths. Many of the children were either killed by someone or were killed in an accident when the mother was absent.[295] Meyer concluded that juries are normally very hard on mothers because they often believe that the mothers should have suspected the danger.[296] However, she has found that fathers are not held to the same standard and are not normally punished for actions that occur in their absence.[297]

While risk of bias is always a concern, the risk increases as the statute gets broader because the statute permits more discretion by the jury. The concern about the existence and effect of bias is substantial, given the evidence suggesting that both conscious and subconscious bias may have influenced the jury's decision to convict Judith.

IV. SUGGESTED ALTERNATIVES AND MODIFICATIONS FOR CONNECTICUT GENERAL STATUTES SECTION 53-21(a)(1)

As discussed in the previous sections, Connecticut's risk-of-injury statute contains legitimate purposes and addresses serious concerns. While the statute serves the important purpose of protecting children, its broadness may compromise some fundamental tenets of the criminal justice system—most obviously, a defendant's right to a fair trial. There is concern that the statute fails to give proper and fair notice of what actions are criminal and may allow convictions for actions that are not normally considered criminal. The broadness of the statute gives prosecutors a great deal of discretion in deciding whom to charge. This may result in disparate treatment of similarly situated individuals as well as charges that are improper under the circumstances. Finally, the broadness of the statute may create an increased risk of jury confusion and bias. This section will suggest alternatives to the statute in order to address such concerns.

A. Remove the Statute

In determining how to improve a statute, it must be considered whether the statute is needed at all. Connecticut General Statutes Section 53-21 was intended to protect children and was drafted very broadly to

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[293] THE AGE, *Putting Blame on Parents when Children are Troubled*, Oct. 11, 2003, http://www.theage.com.au/articles/2003/10/10/1065676157126.html.

[294] *See id.*

[295] *See id.*

[296] *See id.*

[297] *Id.*

accomplish this goal. It was probably presumed that the legislature would be unable to predict the various ways in which children could be harmed and that in order to properly fulfill its purpose, the statute would have to be broad. However, a review of Connecticut's use of the statute suggests that the legislature has done a good job of predicting behavior that is harmful to children because it is often the same behavior that is harmful to adults. Therefore, there are already other laws prohibiting the behavior. In the sixty years that the statute has existed and in the six hundred times it has been used, it was only used four times without a concomitant charge.

Therefore, perhaps the state would not forgo its desire to protect children by eliminating the statute. The legislature could pass laws prohibiting the behaviors that occurred in the four cases in which the statute was not used in conjunction with any other charge, or it could prescribe additional punishment for potential harm to children by escalating the charge of the offense when children are the victims of the crime or when the offense involves another manner in which children could be harmed. For example, one could be charged with driving under the influence, but if there were a minor in the car, there could be a separate, attached charge of risking injury to a minor because the driver would be intoxicated. The additional charge for risking injury to a minor would be part of the driving-under-the-influence statute rather than an independent statute. This type of escalated penalty based on the age of the victim already exists in many statutes.[298]

This suggestion would eliminate the concerns of vagueness and prosecutorial discretion and would give juries a more concrete statute upon which to base a conviction. This would also reduce the likelihood of confusion and bias. Alternatively, the problem with this suggestion is that it would require amendments to many statutes. Additionally, it may reduce the protection given to children, for it is possible that a situation could

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[298] *See, e.g.,* CONN. GEN. STAT. § 53a-70 (2005) ("(a) A person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person, or (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person . . .

(b) (1) Except as provided in subdivision (2) of this subsection, sexual assault in the first degree is a class B felony for which two years of the sentence imposed may not be suspended or reduced by the court or, if the victim of the offense is under ten years of age, for which ten years of the sentence imposed may not be suspended or reduced by the court.

(2) Sexual assault in the first degree is a class A felony if the offense is a violation of subdivision (1) of subsection (a) of this section and the victim of the offense is under sixteen years of age or the offense is a violation of subdivision (2) of subsection (a) of this section. Any person found guilty under said subdivision (1) or (2) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim is under ten years of age or of which five years of the sentence imposed may not be suspended or reduced by the court if the victim is under sixteen years of age.").

occur in which the risk of harm to a child is great, but the action does not satisfy any of the elements of a separate crime. Also, removing the statute eliminates a bargaining chip for prosecutors who can currently offer to drop the second charge if the defendant pleads guilty to risk of injury to a minor.

The reasons against removing the statute are considerable, and the statute should not be removed without careful consideration. The next suggestion provides many of the same benefits without the problems presented by complete removal.

B. Change Practice and Revive the Vagueness Challenge

The legislature does not have to eliminate the statute to achieve the benefits suggested in the first subsection. This could be achieved by changing the way in which prosecutors and courts interpret the statute. Instead of conceptualizing the statute as an independent charge, the use of the statute could be limited to punishing actions that violate other statutes, much like it has been used in its history. This would allow the statute to continue to be a bargaining chip for plea bargaining purposes.

Additionally, the statute could be used in the rare situation in which it was strongly felt that the statute needed to be used independently. However, it should only be done with reasonable scrutiny and with the understanding of the aforementioned risks discussed in Part III. A court should consider the constitutionality of the application of the statute and the notice available to the defendant. The sources that are considered to provide notice should be reduced from the current list of judicial opinions involving the statute, common law, legal dictionaries, treatises, warnings from state actors, and common sense. The new list should be limited to statutes, judicial opinions, common law, and warnings from state actors to the defendant. Perhaps the burden should shift from the defendant having to prove that the statute is unconstitutional to the state having to prove that the statute is constitutional in a situation in which the defendant is only charged under the risk-of-injury statute.

C. Create a Non-Exhaustive List

The legislature might remove some of the statute's vagueness by amending it to include a non-exhaustive list of behaviors that it finds harmful to children. This would give the public and jurors a sense of the behaviors that are forbidden.

D. Eliminate the Effects of Hindsight

As Part III.B discussed, defendants are disadvantaged when defending a section 53-21(a) risk-of-injury charge if the jury is told that the child was

actually injured. Allowing the jury to hear that the child was injured—regardless of the cause of the injury—may make a jury overestimate the potential risk of injury to the child. Additionally, the actual harm to the child is irrelevant because the statute is only concerned with whether the child was likely to be injured and not whether the child was actually injured.

In order to eliminate the effect of hindsight, it might be beneficial to keep the jury uninformed of any injury that the child suffered. The *Scruggs* jury could have determined whether Judith's house was potentially harmful to Daniel without knowledge of Daniel's suicide, which was an indication of the extent of harm, which, as the statute stands, is not relevant.

There are two alternatives as to the manner in which the jury can be instructed concerning the lack of information they receive as to any harm to the child. First, the jury could be instructed not to make any assumption or inference regarding what happened to the child or why they were not hearing about what happened to the child. Another possibility would be to instruct the jury to assume that the child was not injured in any manner. This would ensure that the jury would not overstate the risk to the child, but if anything, this might understate the risk to the child. This could also eliminate the possibility that the jury would use the statute to punish the adult for harm that actually occurred to the child. This alternative would allow the jury to focus on the question that the statute presents—the adult created or permitted the child to be in a situation that put the child at risk and whether that action would be something that should be criminally punished.

E. Add Language for Death Cases

Part III.B also discussed the concern for allowing the state to charge a parent for actions after the suicide of his or her child. It suggests that circumstances in which the child has passed away before the charge was brought are unique and need special considerations. Therefore, there may be a need to add language to the statute that would allow the consideration of additional factors in the context in which the child had passed away before the charges were brought.

Instead of simply asking if the parent placed the child in a situation that was likely to harm the child, factors such as whether there was actual harm, the extent of that harm, and if the harm was related to the child's death, should be considered. This would reduce the risk of parents' decisions being scrutinized after their child has committed suicide.

F. Provide Clear Instructions and Special Verdicts

Because of concern about juror bias and confusion in risk-of-injury cases, it might be appropriate for courts to allow special procedures to

reduce the likelihood of bias or confusion.

The judge could accomplish this by taking extra care in his or her instruction to ensure that the jury clearly understands what is at issue and what question it should be answering. This would eliminate situations similar to *Scruggs* (in which the prosecutor and judge believed that the issue was whether Daniel's mental health was at risk by Judith's action, and the jury convicted her based upon its concerns about the risk to Daniel's physical health).

Secondly, in cases in which confusion is likely, the defendant should request, and the judge should allow, special verdicts as opposed to a general verdict. The judge would provide a list of specific questions to the jury that would determine if the jury believed there was a risk to the child, what it believed the risk was, and what evidence it were basing its decision upon. Then, the judge could use the answers to determine the appropriate verdict for the case.

V. CONCLUSION

The *Scruggs* case presents problems with Connecticut's risk-of-injury statute that deserve review. While it is important to protect children, it is also important to protect the integrity of our criminal justice system. This Comment has suggested some possible changes to the statute that ensure a more proper balance between these two goals.