

THE MISAPPLICATION OF COMPARATIVE  
NEGLIGENCE: AN ARGUMENT FOR THE USE OF  
JOINT AND SEVERAL LIABILITY IN GUN CONTROL.  
[WOOD V. GROH, 7 P.3D 1163 (KAN. 2000).]

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I. INTRODUCTION

In the United States, a deep divide exists between opposing factions of the gun control debate. Those seeking to protect children from the dangers of firearms urge the United States Congress and state legislatures to enact more stringent gun control measures.<sup>1</sup> In contrast, hunting enthusiasts and citizens citing personal protection lobby for their right to bear arms.<sup>2</sup> While enacting new gun legislation may not be the panacea for protecting the children of Kansas, preventing gun violence among children cannot be sacrificed for fear of infringing upon a gun owner's rights.<sup>3</sup>

In deciding *Wood v. Groh*,<sup>4</sup> the Kansas Supreme Court missed the opportunity to propel the state to the forefront of modern gun control and protect the children of Kansas against the danger of firearms. The court concluded that gun owners "owe the highest degree of care to

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1. Following the incident at Columbine High School, President Clinton called for "hold[ing] negligent parents liable when their children use guns to commit crimes." David Espo, *Clinton Urges Gun Curbs*, THE RECORD, NORTHERN NEW JERSEY, April 28, 1999, \*1, available at 1999 WL 7098443.

2. In testimony to the Kansas House Federal and State Affairs Committee, Safe State found that guns intended to be used for home protection are "43 times more likely to kill a family member or friend . . ." because the gun is often left loaded and readily accessible. *Safe Storage of Firearms: Testimony in Support of H.B. 3016 Before House Federal and State Affairs Comm.*, 2000 Leg., 78th Sess. 1 (Kan. 2000) (statement of Kelly W. Johnston, Chair, Safe State) (Attachment No. 10).

3. Senator Trent Lott, R.-Miss., views President Clinton's call to action for new gun control measures in the wake of the Columbine High School shootings as a "knee jerk reaction," because little will be done by Congress to implement gun control legislation. Espo, *supra* note 1, at \*2. The Republican Party receives large campaign contributions from the National Rifle Association (NRA), and Democrats avoid gun control legislation to prevent losing congressional seats in Western and Southern states. *See id.*

4. 7 P.3d 1163 (Kan. 2000).

[safeguard] the public from misuse of [a] gun.”<sup>5</sup> The court also found that parents could be negligent for not properly supervising their child.<sup>6</sup> It logically follows that the court would hold negligent parents liable if their child injures another person by using the parent’s firearm. However, the court overlooked the strong policy considerations that necessitate holding parents jointly and severally liable with their children. Rather than setting a precedent for the state and nation to follow, the court hid behind Kansas statutory law that allows joint and several liability to be replaced with a comparative negligence standard.<sup>7</sup> As a result, parents who own guns and Second Amendment<sup>8</sup> advocates can breathe a sigh of relief. Yet, while these parties feel vindicated that liability for negligent gun use is preserved at a minimal standard, the children of Kansas remain at risk for serious injury and possible death due to the misuse of firearms.

## II. CASE DESCRIPTION

Derry and Choon Groh are the parents of a fifteen-year-old boy, Ed.<sup>9</sup> Mr. Groh and his son practiced target shooting on several occasions.<sup>10</sup> The guns were stored at home in a gun cabinet under lock and key.<sup>11</sup> Mr. Groh kept the only key for the cabinet on his key ring, which he carried.<sup>12</sup> Even though he knew that the guns were not to be used without his father’s supervision,<sup>13</sup> Ed admitted that he occasionally took the gun from the cabinet and shot it without his father’s presence.<sup>14</sup> Ed stated that his father knew of the unsupervised use of the gun.<sup>15</sup>

Prior to the incident that gave rise to this case, Ed was arrested for “taking someone’s car without permission and ‘joyriding.’”<sup>16</sup> Consequently, he was placed on probation.<sup>17</sup> The probationary terms included an 11:30 p.m. curfew on weekends and a prohibition on the possession of firearms unless he had permission from his probation officer.<sup>18</sup> Mr. and Mrs. Groh were both aware of the terms of Ed’s

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5. *Id.* at 1169.

6. *See id.* at 1172.

7. *See* KAN. STAT. ANN. § 60-258(a) (1995).

8. “A well regulated militia, being necessary to the security of a free state, the right to keep and bear arms, shall not be infringed.” U.S. CONST. amend. II. A discussion of the Second Amendment is beyond the realm of this comment.

9. *See Wood*, 7 P.3d at 1166.

10. *See id.* at 1167.

11. *See id.*

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *Id.*

17. *See id.*

18. *See id.* The court does not clearly state whether the curfew is part of Ed’s probationary terms or if his parents instituted it. *Cf.* Brief of Appellants at 3, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A) (stating the curfew was imposed due to taking the automobile).

probation.<sup>19</sup>

Mr. and Mrs. Groh admitted that on the night of May 27, 1995, they were ignorant as to Ed's whereabouts.<sup>20</sup> Earlier that day, Ed "used a screwdriver to open his father's locked gun cabinet."<sup>21</sup> He took from the cabinet an unloaded .22 caliber pistol, a loaded ammunition clip, and additional ammunition.<sup>22</sup> Ed then proceeded to a friend's house where he consumed alcoholic beverages and shot at targets.<sup>23</sup> Later in the evening, Ed traveled to the Archedenkin home for an unsupervised party with alcohol being served.<sup>24</sup> Ed showed the gun to others at the party.<sup>25</sup> Around midnight, the victim in this case, Sarah Wood, arrived at the party and consumed alcoholic beverages.<sup>26</sup> Ed left the Archedenkin residence at about 1:30 a.m. to attend another party, but he returned to the Archedenkin's at 2:30 a.m.<sup>27</sup> At that time, as he and Sarah ascended the staircase, the gun discharged,<sup>28</sup> shooting Sarah in the buttocks.<sup>29</sup> Thus, not only did Ed shoot Sarah, he also violated the terms of his probation by exceeding his 11:30 p.m. curfew and possessing a pistol.<sup>30</sup>

Warren and Linda Wood joined their daughter in filing suit against Derry and Choon Groh, "alleging negligent parental supervision and negligent safeguarding of a gun."<sup>31</sup> Following a trial, the jury determined the fault was shared in these proportions: Ed seventy percent, Sarah twenty percent, and Derry and Choon Groh ten percent.<sup>32</sup> Thus, the court reduced the jury award and entered final judgment against Derry and Choon Groh for \$10,000 to Sarah Wood and \$916.25 to her parents.<sup>33</sup>

Seemingly unsatisfied with the jury verdict, the Wood's appeal two issues:

(1) [W]hether the district court erred in refusing to instruct the jury that

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19. See Brief of Appellants at 3-4, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A).

20. See *Wood*, 7 P.3d at 1167.

21. *Id.* at 1166.

22. See *id.*

23. See *id.* at 1166-67.

24. See *id.* at 1167.

25. See *id.* Sarah Wood testified the "boys [were] putting the gun into their mouths and pulling the trigger." Brief of Appellants at 6, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A).

26. See *Wood*, 7 P.3d at 1167.

27. See *id.*

28. See *id.* The facts surrounding the discharge of the gun remain in dispute. See Brief of Appellants at 6, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A). The Appellant claimed that the gun discharged "somehow." *Id.* Cf. Brief of Appellee/Cross-Appellants at 5, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A). The Appellee claimed the gun discharged "unintentionally." *Id.* See also, *Wood v. Groh*, 7 P.3d at 1170 (rejecting joint and several liability theory because discharge of gun was "accidental.").

29. See *Wood*, 7 P.3d at 1167.

30. See *id.*

31. *Id.* The Wood's also filed suit against the Archedenkins; however, the claim was dismissed on summary judgment and they are not a party to the appeal. See *id.*

32. See *id.*

33. See *id.* The jury awarded "\$100,000 to Sarah Wood and \$9,162.50 to her parents." *Id.*

the Grohs owed the highest degree of care in safeguarding a handgun and; (2) whether the district court erred by refusing to find the Grohs jointly and severally liable for the combined fault of themselves and their son.<sup>34</sup>

Conversely, the Grohs questioned “whether the district court properly instructed the jury on the issue of negligent parental supervision of their son.”<sup>35</sup>

### III. BACKGROUND

Gun violence has permeated our society over the past two decades. As a result, more children feel the need to carry firearms for personal protection.<sup>36</sup> In 1991, more than 5,000 firearm-related deaths involved children and teenagers.<sup>37</sup> What once seemed to be only an inner city crisis has infiltrated small towns throughout the nation.<sup>38</sup> This is a significant trend for Kansas, largely comprised of rural communities, where recreational hunting<sup>39</sup> is enmeshed into the culture.<sup>40</sup> The most alarming statistic indicates that fifty percent of children believe that “obtaining a gun is easy, of ‘little’ or ‘no’ trouble.”<sup>41</sup> In addition, of children who do possess firearms, forty-eight percent obtained their gun from a family member or friend.<sup>42</sup>

These disturbing statistics have become evident in two recent cases before the Kansas Supreme Court.<sup>43</sup> Cases involving a child’s misuse of a firearm, like *Wood*,<sup>44</sup> share the common theme of parental liability. Implementing sufficient and fair parental liability is an arduous issue for the court.<sup>45</sup> In *Wood*, the Kansas Supreme Court analyzed three

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34. *Id.*

35. *Id.* The court rejected the Groh’s argument that the district court erred by refusing to impose sanctions for the Wood’s post trial filings. *See id.* at 1172. The Kansas Supreme Court stated that Kansas Statutes Annotated section 60-211(c) allows courts to determine which type of sanctions to impose on attorneys who violate the statute, and it is not mandatory to award attorney fees to opposing counsel. *See id.* The court also denied the Groh’s request for the court to overturn the district court’s instruction to the jury that the Grohs could be found negligent for failing to prevent their son from breaking into the locked gun cabinet. *See id.* at 1173. The court held that issues not raised at trial could not be addressed in an appeal. *See id.*

36. *See* Joseph F. Sheley & James D. Wright, *High School Youths, Weapons, and Violence: A National Survey*, NAT’L INST. OF JUSTICE: RESEARCH IN BRIEF 2 (October 1998).

37. *See* NORMAN B. RUSHFORTH, AND DANIEL J. FLANNERY, *YOUTH VIOLENCE: PREVENTION, INTERVENTION, AND SOCIAL POLICY* 202 (1999).

38. *See* SHELEY & WRIGHT, *supra* note 36, at 1.

39. *See id.*

40. Hunting is a year-long activity in Kansas. *See* Kansas Department of Wildlife and Parks, *The Sportsmen’s Calendar*, (February 5, 2001), available at <http://www.kdwp.state.ks.us/hunting/sportcalendar.html>.

41. SHELEY & WRIGHT, *supra* note 36, at 1. Data collected from a national survey of “male high school sophomores and juniors.” *Id.*

42. *See id.* at 4.

43. *See generally* *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000); *Long v. Turk*, 962 P.2d 1093 (Kan. 1998).

44. *See generally* *Wood*, 7 P.3d at 1167 and *Long*, 962 P.2d at 1094.

45. *See, generally* *Wood*, 7 P.3d 1163 and *Long*, 962 P.2d 1093.

significant areas of the law to render a ruling on parental liability.<sup>46</sup> The court reviewed: (1) the “Inherently Dangerous Instrument Doctrine”;<sup>47</sup> (2) parental negligence for lack of supervision of children;<sup>48</sup> and (3) joint and several liability through the theory of comparative fault.<sup>49</sup>

Inherently dangerous instruments come in many varieties, including shoes,<sup>50</sup> teeth,<sup>51</sup> fists,<sup>52</sup> automobiles,<sup>53</sup> as well as, firearms.<sup>54</sup> The Inherently Dangerous Instrument Doctrine has been constructed by implementing several provisions of the Restatement (Second) of Torts, and appears<sup>55</sup> to be a three-prong analysis.<sup>56</sup> First the court must examine whether an item is considered inherently dangerous.<sup>57</sup> If the court deems the instrument is inherently dangerous, it must then assess the degree of care owed.<sup>58</sup> The last duty is for the court to determine what liability awaits the owner if a third party misuses the inherently dangerous item.<sup>59</sup>

The courts have played an integral role in crafting the Inherently Dangerous Instrument Doctrine.<sup>60</sup> In 1915, the Kansas Supreme Court established the first prong of this doctrine by classifying firearms, solid glycerin, and dynamite as inherently dangerous instruments, all of which require the same heightened degree of care.<sup>61</sup> Nearly eighty-five years after initially stating that firearms are inherently dangerous, the Kansas Supreme Court reaffirmed that notion in *Long v. Turk*.<sup>62</sup>

The second prong establishes the degree of care required.<sup>63</sup> In every situation involving a firearm, an actor must exhibit reasonable

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46. See generally *Wood*, 7 P.3d at 1167-72.

47. *Id.* at 1169. See also, *Long*, 962 P.2d at 1096.

48. See *Wood*, 7 P.3d at 1172.

49. See *id.* at 1170.

50. See *U.S. v. Riggins*, 40 F.3d 1055, 1057 (9th Cir. 1994) (finding shoes and belt are inherently dangerous instruments when mother used them to beat her two-year old son, inflicting bodily harm and endangering life).

51. See *U.S. v. Sturgis*, 48 F.3d 784, 788 (4th Cir. 1994) (finding teeth are inherently dangerous weapons when an HIV-infected inmate bit and drew blood on two prison guards due to the possible HIV transmission).

52. See *Hollis v. State*, 417 So.2d 617, 619 (Ala. 1982) (finding that fists used to beat another individual are “deadly weapons.”)

53. See *Tyra v. State*, 897 S.W. 2d 796, 798 (Tex. 1995) (finding that an automobile is inherently dangerous when it is used to kill another person).

54. See *Long v. Turk*, 962 P.2d 1093, 1096 (Kan. 1998) (concluding that a .357 Magnum is a dangerous instrument).

55. The “Inherently Dangerous Instrument Doctrine” was first analyzed by the Kansas Supreme Court in *Long v. Turk*. See *Long*, 962 P.2d at 1096. The court did not state in either *Long* or *Wood v. Groh* that the Inherently Dangerous Instrument Doctrine is a three-prong test. See generally *Long*, 962 P.2d at 1096-98 and *Wood*, 7 P.3d at 1168-70. However, the court reviewed three distinct components in both cases. See *Long*, 962 P.2d 1096-98 and *Wood*, 7 P.3d 1168-70.

56. See *Long*, 962 P.2d at 1097.

57. See *id.*

58. See *id.*

59. See *id.*

60. See *id.*

61. See *Clark v. Powder Co.*, 146 P. 320, 321 (Kan. 1915).

62. 962 P.2d at 1096.

63. See *id.* at 1097. The level of care necessary in dealing with firearms is explained in section 298, Comment b of the Restatement (Second) of Torts (1964).

care.<sup>64</sup> Dangerous acts or instruments require a level of reasonable care commensurate to the danger involved.<sup>65</sup> Therefore, because a firearm has the potential to seriously injure or cause death, a gun owner is required to exercise the highest degree of care regarding the use and possession of a gun.<sup>66</sup> Kansas has adopted this rationale for firearms.<sup>67</sup>

The final prong of the Inherently Dangerous Instrument Doctrine holds the owner of that instrument liable when another misuses the instrument.<sup>68</sup> The Kansas Supreme Court adopted section 308 of the Restatement (Second) of Torts,<sup>69</sup> which states:

It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor *knows or should know* that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner to create an unreasonable risk of harm to others.<sup>70</sup>

Based upon this provision, a Kansas gun owner is negligent if the firearm or other dangerous instrumentality is available to an individual who is inexperienced in its use, and thus not aware of the consequences.<sup>71</sup>

Following its analysis of the Inherently Dangerous Instrument Doctrine, the court reviewed the concept of parental negligence in supervising the actions of their child.<sup>72</sup> The laws governing parental negligence were born out of the theory of a master's liability for the servant.<sup>73</sup> In 1930, the Kansas Supreme Court stated in *Capps v. Carpenter*<sup>74</sup> that a parent is liable for the conduct of a child if the child is acting in the interest of the parent.<sup>75</sup> The court recognized that while

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64. See RESTATEMENT (SECOND) OF TORTS § 298 cmt. b (1964).

65. See *id.*

66. See *Clark*, 146 at 321 (Kan. 1915).

67. See generally *id.*

68. See *Long v. Turk*, 962 P.2d 1093, 1097 (Kan. 1998).

69. See *Wroth v. McKinney*, 373 P.2d 216, 219 (Kan. 1962). *Wroth* adopted the predecessor to the Restatement (Second) of Torts section 308 (1964). See *id.*

70. RESTATEMENT (SECOND) OF TORTS § 308 (1964)(emphasis added).

71. See *Wroth*, 373 P.2d at 219 (citing RESTATEMENT (FIRST) OF TORTS § 308, that leaving "loaded fire-arms . . . within reach of young children" is negligent). See also, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (updating "loaded firearm" to include unloaded gun as inherently dangerous instrument when ammunition is readily available).

72. See *Wood*, 7 P.3d at 1172.

73. See *Capps v. Carpenter*, 283 P. 655, 659 (Kan. 1930) (finding parents are not liable for the tortious acts of their children merely because of the parent/child relationship). Cf. *Cullip v. Domann*, 972 P.2d 776, 785 (Kan. 1999) (citing *McGee v. Chalfant*, 806 P.2d 980, 983 (1991)). The court in *Cullip* states, "As a general rule in Kansas, there is no duty to control the conduct of a third pers on in order to prevent harm to others absent a special relationship. Such a relationship, however, may exist between parent and child." *Cullip*, 972 P.2d at 785. Although this statement appears to be a contradiction to the court's analysis in *Wood* and *Long*, the court's conclusion in both instances results in the same outcome: parents have a duty to control their children.

74. 283 P. 655, 659 (Kan. 1930).

75. See *id.* (comparing the child to a servant furthering business of master) (citing *Mirick v. Sucha*, 87 P. 1141, 1142 (Kan. 1906) (analyzing defendant's imputed liability because the sons acted as the agents of their father in setting a fire on the farm in the course of their employment)).

parents should not be liable simply because of the parent-child relationship, "a universal rule of non-liability . . . [is] likely to fail."<sup>76</sup>

Because liability could not be imputed directly to the parent through the relationship with the child, Kansas courts found alternatives for holding parents accountable.<sup>77</sup> In *Mitchell v. Wiltfong*,<sup>78</sup> the Kansas Court of Appeals adopted a policy on negligent supervision by a parent.<sup>79</sup> The court held that the parents were liable for insufficiently supervising their son, and failing to prevent him from beating, harassing and assaulting other neighborhood children.<sup>80</sup> The court opted to use section 316 of the Restatement (Second) of Torts as the benchmark.<sup>81</sup>

A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others *or conducting itself as to create an unreasonable risk of bodily harm* to them if the parent, (a) knows or has reason to know that he has the ability to control his child and; (b) knows or should know of the necessity and opportunity for exertion of control.<sup>82</sup>

When deciding *Wood*, the Kansas Supreme Court affirmed the above section 316 language as the correct definition of negligent parental supervision.<sup>83</sup>

After recognizing that parents may be negligent in safeguarding their firearm and supervising their children, the court examined liability for parents. The theory of joint and several liability traditionally states that two parties are negligent and both are equally obligated to pay the entire judgment to the plaintiff.<sup>84</sup> The courts of Kansas have approached negligence cases with the philosophy that Kansas Statutes Annotated section 60-258a was designed to vacate joint and several liability.<sup>85</sup> The Kansas legislature enacted Kansas Statutes Annotated section 60-258a on comparative negligence in 1974.<sup>86</sup> Comparative negligence in Kansas requires that the party seeking a remedy be less

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76. *See id.*

77. *See generally* *Mitchell v. Wiltfong*, 604 P.2d 79 (Kan. 1979).

78. 604 P.2d 79 (Kan. 1979).

79. *See id.* at 82.

80. *See id.* (reversing and remanding because plaintiffs stated a claim on which relief could be granted based upon negligent parental supervision).

81. *See id.*

82. RESTATEMENT (SECOND) OF TORTS § 316 (1964) (emphasis added).

83. *See* *Wood v. Groh*, 7 P.3d 1163, 1172 (Kan. 2000).

84. BLACKS LAW DICTIONARY 926 (7th ed. 1999).

85. *See* *Brown v. Keill*, 580 P.2d 867, 874 (Kan. 1978). The Kansas Supreme Court reviewed the common law concept of joint and several liability, and supplanted it with the comparative negligence standard to prevent a complete bar to recovery for the plaintiff if she is negligent. *See id.* at 875.

86. *See* KAN. STAT. ANN. § 60-258a (1995). The preamble to House Bill 1784 indicates that the legislature did not intend to abolish joint and several liability; rather, it merely removed the bar to recovery for a negligent plaintiff. In its original form, the statute was entitled "An act concerning tort liability abolishing contributory negligence as a bar to recovery and providing for the awarding of damages on the basis of comparative negligence." Act of Mar. 15, 1974, ch. 239, 1974 Kan. Sess. Laws.

than fifty percent at fault.<sup>87</sup> The jury is left with the duty of apportioning liability among the parties.<sup>88</sup> The jury's award to the plaintiff is reduced by an amount corresponding to her percentage of fault.<sup>89</sup> Each defendant who is partially at fault is only responsible to pay for the amount of damages equivalent to the percentage found by the jury.<sup>90</sup>

In *Wood*, the Kansas Supreme Court continued to adhere to this interpretation of Kansas Statutes Annotated Section 60-258a.<sup>91</sup> Contrary to this interpretation, the House and Senate Journals do not include any language that indicates the legislative intent to vacate joint and several liability.<sup>92</sup>

#### IV. ANALYSIS

In *Wood*, the Kansas Supreme Court evaluated negligence through controlling both firearms and children.<sup>93</sup> While it established two possible grounds for parental negligence, the court concluded that the primary issue was to determine what duty of care a gun owner had in controlling his firearm, thus avoiding a firm decision on parental liability.<sup>94</sup>

##### A. The Parties Arguments and the Court's Holding

The plaintiffs' appellate brief asserted two central issues.<sup>95</sup> First, the Woods appealed the district court's refusal to instruct the jury that safeguarding a gun required the highest degree of care.<sup>96</sup> In spite of Kansas case law,<sup>97</sup> which had consistently mandated an instruction of the

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87. See KAN. STAT. ANN. § 60-258a (1995). For example, if a plaintiff is seventy-percent negligent and the defendant is thirty-percent negligent, the plaintiff will not recover. However, if the percentages are reversed, plaintiff thirty percent and defendant seventy percent, then the plaintiff can recover seventy percent of damages awarded by the jury.

88. See *id.*

89. See *id.*

90. See *id.*

91. See *Wood v. Groh*, 7 P.3d 1163, 1170 (Kan. 2000).

92. See 1974 Kan. House and Senate Journals.

93. See generally *Wood*, 7 P.3d at 1167-70, 1172-73 (Kan. 2000). The court also examined sanctions under Kansas Statute Annotated section 60-211. See *id.* at 1171.

94. See *id.* at 1169.

95. See generally Brief of Appellants at 1, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A).

96. See *Wood*, 7 P.3d at 1167. The district court reasoned that a gun in its unloaded state is not inherently dangerous. See *id.* at 1168. The Kansas Supreme Court found that keeping the gun and ammunition in separate compartments is insignificant to the theory that firearms are inherently dangerous instruments. See *id.* at 1169.

97. In their appeal, the Woods rely on *Long v. Turk*, 962 P.2d 1093 (Kan. 1998), to establish the need to instruct on the highest degree of care. See *Wood*, 7 P.3d at 1168. However, at the time the present case was before the Lyon County District Court, *Long* had not been decided by the Kansas Supreme Court. See *Wood*, 7 P.3d at 1169. Even though this case was not decided, the Lyon County District Court should have followed the available Kansas precedent to generate the same result as in *Long*. The court in *Long* did not create new law. It merely reaffirmed the previous case law in Kansas. See *Long*, 962 P.2d at 1097; *Clark v. Powder Co.*, 146 P. 320 (Kan. 1915).

highest degree of care,<sup>98</sup> the district court instructed the jury to use ordinary-care standard.<sup>99</sup>

The Kansas Supreme Court felt it was plausible that the highest degree of care was not exerted in this case.<sup>100</sup> Although the Grohs kept the gun in a locked cabinet, their son merely needed a screwdriver to gain access to the contents.<sup>101</sup> In reversing, consistent with the highest degree of care standard, the Kansas Supreme Court found that the outcome of the deliberations could have been different had the jury been instructed on the correct standard.<sup>102</sup> The court emphasized liability for parents who negligently store their firearms by confirming the duty of care required to safeguard a firearm.<sup>103</sup>

The Woods' second argument centered on the joint and several liability of Ed Groh and his parents.<sup>104</sup> The district court submitted the case to the jury on a comparative negligence theory as established in Kansas Statutes Annotated section 60-258a.<sup>105</sup> In their brief to the Kansas Supreme Court, the Woods utilized case law that allowed for joint and several liability when one party had a duty to control another party.<sup>106</sup> The Kansas Supreme Court, however, quashed the Woods' attempt to receive a joint and several liability instruction to the jury on two grounds: (1) all of the cases cited by the Woods pertain to incidents of intentional acts, not accidental;<sup>107</sup> and (2) when multiple tortfeasors are negligent, the jury must analyze fault pursuant to Kansas Statutes Annotated section 60-258a.<sup>108</sup> Based upon the court's ruling in the case, parents might be negligent in safeguarding their gun, but would not be jointly and severally liable even if their child killed or injured another with that firearm.

The defendants, who cross-appealed on this case, provided another

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98. See generally *Clark v. Powder Co.*, 146 P. 320 (Kan. 1915); *Wroth v. McKinney*, 373 P.2d 216 (Kan. 1962); and *Long v. Turk*, 962 P.2d 1093 (Kan. 1998).

99. See *Wood*, 7 P.3d at 1168.

100. See *id.* at 1169, 1170. The court stated, "[t]he parents took significant steps to prevent their son from obtaining possession of the gun. . . . Their son, however, only had to use a screwdriver to gain access to the cabinet and obtain possession of both the gun and ammunition." *Id.*

101. See *id.* at 1170.

102. See *id.*

103. See *id.* at 1169.

104. See *id.* at 1170.

105. See *id.*

106. See Brief of Appellants at 2, *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000) (No. 98-81826-A); see also *Wood*, 7 P.3d at 1170. The *Wood* court cited *Kansas State Bank & Trust Co. v. Specialized Transp. Serv., Inc.*, 819 P.2d 587, 605-07 (1991) ("imposing joint liability upon those whose duty is to prevent third parties from inflicting injury"); *Gould v. Taco Bell*, 722 P.2d 511, 517 (1986) ("stating intentional acts of a third party cannot be compared with the negligent acts of a defendant whose duty it was to protect the plaintiff from the intentional acts committed by the third party"); *M. Bruenger & Co. v. Dodge City Truck Stop, Inc.*, 675 P.2d 864, 869-70 (1984) (holding "the district court should not have permitted the fault of the negligent bailee to be compared with that of the intentional act of the thief."). *Wood*, 7 P.3d at 1170.

107. See *id.* The Kansas Supreme Court is the only body that classified this shooting as "accidental." *Id.*

108. See *id.* The court states "[t]he concept of joint and several liability between joint tortfeasors did not apply to comparative negligence actions." *Id.*

means for determining negligence of parents. The Grohs disputed the sufficiency of evidence and instruction to the jury on a theory of negligent parental supervision.<sup>109</sup> Jury instruction No. 14 paralleled the tort of negligent parental supervision as outlined in section 316 of the Restatement (Second) of Torts.<sup>110</sup> The court denied the Grohs' appeal, though, because they did not raise the issue at trial.<sup>111</sup> However, the court pointed out that the evidence presented at trial was sufficient<sup>112</sup> to allow the jury the opportunity to make a determination.<sup>113</sup> The effort exerted in highlighting this issue indicated that it was the court's opinion that parents could be negligent for improperly supervising their child's use of a firearm.<sup>114</sup>

The dissent,<sup>115</sup> in determining that the Grohs were not liable as a matter of law, questioned the degree of care required to safeguard a firearm.<sup>116</sup> Justice Abbott stated, "[t]he majority . . . makes it almost absolute liability to own a gun."<sup>117</sup> According to Justice Abbott, there are no more measures a gun owner can take in protecting the public from the misuse of the gun than to lock it up in a cabinet and keep the key.<sup>118</sup>

*B. Joint and Several Liability Should be Adopted in Kansas When Children Misuse Their Parents' Firearms*

Currently, Kansas is falling behind those states that are adopting measures that seek to unravel the complexities of effective gun control. In 1989, Florida passed the Child Access Prevention law, which made it a felony to allow a child access to a loaded gun.<sup>119</sup> Fifteen states have

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109. *See id.* at 1172.

110. *See id.* Jury instruction No. 14A states:

A parent is under a duty to exercise reasonable care to control their minor child as to prevent said child from intentionally harming others or from so conducting themselves as to create an unreasonable risk of bodily harm to others if the parents know or have reason to know that they have the ability to control their child and know or should know of the necessity and opportunity for exercising such control.

*Id.*

*Cf.* *Capps v. Carpenter*, 283 P. 655, 659 (Kan. 1930); *Cullip v. Domann*, 972 P.2d 776, 785 (Kan. 1999) (citing *McGee v. Chalfant*, 806 P.2d 980, 983 (1991)). For a general discussion of this duty, *see supra* note 73.

111. *See id.* at 1173.

112. *See id.* The court cites the following facts in determining the evidence was sufficient: (1) Ed's previous arrest; (2) the Grohs' familiarity with the probation terms and (3) the testimony that Ed's father knew about him taking the gun. *See id.*

113. *See id.*

114. *See id.* The court could have addressed this issue by refusing to analyze it, as the Grohs did not put forth the issue at trial. Instead, the court chose to call attention to evidence that a jury might consider to find the Grohs' parental supervision negligent.

115. *See id.* at 1173-74. Justice Abbott wrote for the dissent with Chief Justice McFarland joining.

116. *See id.* at 1174.

117. *Id.*

118. *See id.*

119. *See* Handgun Control, *State Summaries*, (Jan. 8, 2001), available at <http://www.handguncontrol.org/laws/cap.asp> (last visited Jan. 8, 2001). Florida's law does have

followed Florida's lead in enacting similar legislation.<sup>120</sup> In addition, Aurora, Colorado has placed civil liability on parents by "enacting parental responsibility statutes to hold parents accountable for their firearms."<sup>121</sup>

During the 2000 Kansas legislative session, House Bill 3016, which is similar to Florida's Child Access Prevention Law, was introduced.<sup>122</sup> The purpose of this new law was to halt shootings where children are the perpetrators.<sup>123</sup> The House Federal and State Affairs Committee held an extensive hearing.<sup>124</sup> However, no further action was taken on House Bill 3016, and it died in committee at the end of the legislative session.<sup>125</sup> Representative Cindy Hermes, R-Topeka, an advocate for the bill, stated, "I don't think the bill is going anywhere. Most of the public . . . is behind it, but I'm getting a lot of opposition from my fellow legislators. I don't know if it is because it's a gun bill or they don't want to upset the NRA."<sup>126</sup>

It seems clear from the apathy of the Kansas Legislature that there is scarce support in enacting a child access prevention law.<sup>127</sup> While no single piece of legislation will eliminate all gun violence, Kansas must draw guidance from other states that it is sensible to make gun owners accountable. Due to legislative silence, the Kansas Supreme Court must take necessary steps in reducing gun violence among children by recognizing joint and several liability as a remedy when a parent's negligent act contributes to their child's misuse of a firearm. The time has come for tort law in Kansas to evolve to meet the demands of child gun violence.<sup>128</sup>

### 1. *Establishing Parental Negligence*

In *Wood*, the Kansas Supreme Court reaffirmed the high degree of

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several qualifiers. For example, if the gun is locked in a box or with a trigger lock, or if the child obtains the gun unlawfully, the law does not apply. *See id.* Additionally, if the minor is merely possessing the gun, the owner will be charged with a misdemeanor. *See id.*

120. *See id.* These states include: California, Connecticut, Delaware, Florida, Hawaii, Iowa, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, North Carolina, Rhode Island, Texas, and Wisconsin. *See id.*

121. *See* DANIEL J. FLANNERY, & C. RONALD HUFF, YOUTH VIOLENCE: PREVENTION, INTERVENTION, AND SOCIAL POLICY 303 (1999).

122. *See* H.B. 3016, 2000 Leg., 78th Sess. (Kan. 2000).

123. *See generally* Jim McLean, *Hermes: Aim is Gun Safety*, TOPEKA CAPITAL JOURNAL, March 20, 2000, available at 2000 WL 17578493.

124. *See id.* at \*2.

125. *See* H.B. 3016, 2000 Leg., 78th Sess. (Kan. 2000), available at LEXIS 1999 Bill Tracking KS H.B. 3016.

126. Jim Ramberg, *Gun Dealer Calls Locks 'Good Idea,' Effective*, TOPEKA CAPITAL JOURNAL, March 28, 2000 at 2-3, available at 2000 WL 17578994.

127. *See* H.B. 3016, 2000 Leg., 78th Sess. (Kan. 2000). The bill failed to exit the committee.

128. *See* *Curry v. Rialto Unified Sch. Dist.*, 24 Cal.Rptr.2d 495, 496 (1994). In upholding California's parental liability statute, CALIFORNIA CIVIL CODE Section 1714.1, the court stated, "[i]n an era of increasing juvenile crime, society is clearly losing its patience with parents who are indifferent to the irresponsible, malicious, or even vicious propensities of their offspring." *Id.* at 500.

care, which is attached to inherently dangerous instruments like firearms.<sup>129</sup> Several factors scrutinize whether a parent had provided the requisite care for firearm.<sup>130</sup> Courts consider the parent's knowledge of the minor's possession or prior use of the gun;<sup>131</sup> the minor's experience, disposition and age;<sup>132</sup> the type of gun involved;<sup>133</sup> place the gun is kept;<sup>134</sup> and the foreseeability of the incident occurring.<sup>135</sup> When a parent fails to meet all of these criteria in caring for their firearm, liability should fall on the parent.<sup>136</sup> Due to the child's lack of familiarity with the consequences of misusing a gun, a parent is in the best position to prevent a child from mishandling firearms.<sup>137</sup>

Not only can parents fail to safeguard their guns, but they can also be negligent in supervising their children.<sup>138</sup> The *Wood* court acknowledged that parents have a responsibility to protect the public from the misbehavior of their child.<sup>139</sup> Parents are the last lines of defense between their firearms and preventing their children from placing others at risk.<sup>140</sup> This is especially true when the parents "know or have reason to know"<sup>141</sup> that factors exist which increase the risk of their child behaving in an irrational manner.<sup>142</sup> The parental negligent supervision theory adopted in Kansas<sup>143</sup> encourages parents to take an

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129. See *Wood v. Groh*, 7 P.3d 1163, 1169 (Kan. 2000).

130. See generally L.S. Rogers, Annotation, *Liability of person permitting child to have gun, or leaving gun accessible to child, for injury inflicted by the latter*, 68 A.L.R. 2d 782 (1959).

131. See *id.* at 785. See also, *Wood*, 7 P.3d at 1173. Mr. Groh took Ed target shooting in violation of Ed's probation and testimony indicated that Mr. Groh knew Ed took the gun without permission on the night in question, as well as, at other times. See *id.*

132. See 68 A.L.R. 2d 782 (1959). See also, *Wood*, 7 P.3d at 1167. Ed, 15, was previously convicted of a crime and was serving a probation term when this incident occurred. See *id.*

133. See 68 A.L.R. 2d 782 (1959). See also, *Wood*, 7 P.3d at 1166. The gun involved was a .22 caliber pistol. See *id.* Cf. *Capps v. Carpenter*, 283 P. 655, 656 (Kan. 1930) (finding that a BB gun is not a firearm).

134. See 68 A.L.R. 2d 782 (1959). See also, *Wood*, 7 P.3d 1170. The gun cabinet was easily disassembled with a screwdriver. See *id.*

135. See 68 A.L.R. 2d 782 (1959).

136. See *id.*

137. See *Safe Storage of Firearms: Testimony in Support of H.B. 3016 Before House Federal and State Affairs Comm.*, 2000 Leg., 78th Sess., 1 (Kan. 2000) (Attachment No. 10) (statement of Kelly W. Johnston, Chair, Safe State). "Unrealistic perceptions of children's capabilities and behavioral tendencies with regard to hand guns are common . . ." *Id.*

138. See *Cullip v. Domann*, 972 P.2d 776, 785 (Kan. 1999) (citing *McGee v. Chalfant*, 806 P.2d 980, 983 (Kan. 1991) (finding that the parent-child relationship is special, thus creating a duty for the parents to prevent their child from harming others)).

139. See *Wood v. Groh*, 7 P.3d 1163, 1172 (Kan. 2000).

140. See generally *Curry V. Rialto Unified Sch. Dist.*, 24 Cal.Rptr.2d 495 (1994). The plaintiff in *Curry* sued the Rialto school district for improper supervision of a minor and the school district brought in the child's parents as third-party defendants to indemnify the school for damages. See *id.* at 496. The California legislature, through the enactment of California Civil Code section 1714.1, recognized the need for imputing liability to parents for their children's willful misconduct that harms another. See *id.* at 497. Based upon this statute, the court upheld joint and several liability of the minor and his parents. See *id.* at 500. The court reasoned, "[t]he parent should not be immune from a claim for equitable indemnity, by a tortfeasor who has been compelled to pay all or a portion of the minor's fair share of the loss." *Id.* at 501.

141. RESTATEMENT (SECOND) OF TORTS § 316 (1964).

142. See *Wood*, 7 P.3d at 1172-73. The Grohs knew that Ed had been convicted of joyriding and violated his probation term by staying out past his curfew. See *id.* at 1167, 1172-73.

143. See *Mitchell v. Wiltfong*, 604 P.2d 79, 83 (Kan. 1979).

active role in their child's life and activities.<sup>144</sup> Parents have a duty to educate their children about dangers, proper use and respect for firearms.<sup>145</sup> Thus, the best place to begin the prevention of youth violence is in the home.

## 2. Joint and Several Liability as a Reasonable Alternative

Joint and several liability should apply in cases like *Wood v. Groh* where two negligent parties contributed to the plaintiff's injury: the child who carelessly used the gun, and the parent who negligently safeguarded the gun and insufficiently supervised the child. The court in *Wood* rejected the argument that the Grohs be held jointly and severally liable.<sup>146</sup> Because the court stated that because the shooting was "accidental," the negligence of Ed and his parents must be examined under Kansas Statutes Annotated section 60-258a on comparative negligence.<sup>147</sup>

The Kansas comparative negligence statute is correctly used in most cases.<sup>148</sup> However, joint and several liability is often a reasonable consideration where there is a heightened duty of care<sup>149</sup> or the act is intentional.<sup>150</sup> A child's misuse of a parent's gun may be an occasion that warrants the use of joint and several liability. Parental negligence compounded with the child's negligence creates a special situation.<sup>151</sup> Joint and several liability should be applied because parents are expected to exert control over the child and their gun to protect the public.<sup>152</sup> The best remedy for the plaintiff is to hold the parent and child jointly and severally liable for their negligent acts.<sup>153</sup>

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144. See *Curry*, 24 Cal.Rptr.2d at 500. The court stated that California's parental negligence statute is designed to "encourage responsibility in parents . . . [and] exercise effective control over their children." *Id.*

145. See *Espo*, *supra* note 1, at \*3.

146. See *Wood*, 7 P.3d at 1170.

147. See *id.*

148. The intent of the legislature is to allow the plaintiff to recover damages even if he is at fault. See *Brown v. Keill*, 580 P.2d 867, 870 (Kan. 1978). Under the contributory negligence system, a plaintiff would recover nothing if they were marginally at fault. See *id.* at 870-71 (citing *Stephens v. McGuire*, 334 P.2d 363, 366 (Kan. 1959)).

149. See, e.g., *State ex rel. Hermesmann v. Seyer*, 847 P.2d 1273, 1279 (Kan. 1993) (finding that a mother and father are jointly and severally liable for the support of a child); see also, KAN. STAT. ANN. § 8-222 (1991).

150. See *Wood*, 7 P.3d at 1170 (citing *Kansas State Bank & Trust Co. v. Specialized Trans. Serv., Inc.*, 819 P.2d 587, 605-06 (Kan. 1991); *Gould v. Taco Bell*, 722 P.2d 511, 516-17 (Kan. 1986)); see also, *M. Bruenger & Co. v. Dodge City Truck Stop, Inc.*, 675 P.2d 864, 869-70 (Kan. 1984).

151. The Kansas Supreme Court does not hold parents vicariously liable for their children. See *Capps v. Carpenter*, 283 P. 655, 659 (Kan. 1930) (finding parents are not liable for the tortious acts of their children merely because of the parent/child relationship).

152. See *Capps v. Carpenter*, 283 P. 655, 659 (Kan. 1930). For a general discussion, see text accompanying note 73, *supra*.

153. See *Wood v. Groh*, 7 P.3d 1163, 1167 (Kan. 2000). Based upon the jury verdict, Sarah Wood and her parents were awarded \$109,162.50. However, due to the comparative negligence instruction, the Grohs, who were deemed ten percent at fault, were responsible for only \$10,916.25. If this were a joint and several liability situation, the Grohs would have been responsible for their son's seventy-percent portion of the damages. Therefore, the Wood's could have received \$76,413.75.

One possibility for the Kansas Supreme Court to attack child gun violence would be to modify its interpretation of the comparative negligence statute and fashion a child misuse of firearm exception. Other exceptions to the comparative negligence statute exist.<sup>154</sup> A powerful example that parallels the parental responsibility for firearms argument is Kansas Statutes Annotated section 8-222, which governs the liability of a motor vehicle owner for damage caused by the negligence of a child.<sup>155</sup> This statute, enacted in 1931, states:

Every owner of a motor vehicle *causing or knowingly* permitting a minor under the age of sixteen years to drive such vehicle upon a highway, and any person who gives or furnishes a motor vehicle to such minor, *shall be jointly and severally liable with such minor for any damages caused by the negligence of such minor in driving such vehicle.*<sup>156</sup>

The plain meaning of the statute clearly indicated the legislature felt an automobile is inherently dangerous in the hands of an untrained minor. Because of the nature of the instrument and the danger involved, parents are jointly and severally liable with the child.<sup>157</sup> When comparing this statute to the case at hand, it seems reasonable that if a parent is jointly and severally liable for a child's use of a motor vehicle, then said parent should be jointly and severally liable when the child misuses the parent's firearm.<sup>158</sup> The Kansas statute provides for joint and several liability when an owner of a motor vehicle ". . . causing or knowingly permit[s] [the use of a motor vehicle]."<sup>159</sup> In the present case, Ed, who was referring to his father, stated that, "[H]e knows I take it sometimes and shoot it."<sup>160</sup> Therefore, it seems reasonable to conclude that if the Grohs would be jointly and severally liable for Ed's negligent use of the family car, then they should be held to the same standard for Ed's negligent use of his father's gun.

Not only does the motor vehicle statute provide a mechanism to analyze parental liability for firearms, but it also indicates the intent of the legislature not to eradicate joint and several liability in Kansas.<sup>161</sup>

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154. See *Boyle v. Harries*, 923 P.2d 504, 511 (Kan. 1996) (citing *Sieben v. Sieben*, 646 P.2d 1036, 1041 (Kan. Ct. App. 1982) (finding that joint and several liability can apply to intentional torts)).

155. See KAN. STAT. ANN. § 8-222 (1991); *cf.*, CAL. VEH. CODE § 17708 (West 2000). California's statute specifically places joint and several liability on parents and guardians for any damages caused by a negligent or intentional act of a minor driving a motor vehicle. See also, WIS. STAT. ANN. § 343.15(2)(b) (West 2000).

156. KAN. STAT. ANN. § 8-222 (1991) (emphasis added).

157. See *id.* The Kansas Supreme Court has discussed liability for negligent use of an automobile but, not with respect to Kansas Statutes Annotated section 8-222. See *Mitchell v. Wiltfong*, 604 P. 2d 79, 81 (Kan. 1979).

158. See *id.* The statute applies to "[e]very owner of a motor vehicle;" presumably in many cases the parent would be the owner. *Id.*

159. *Id.*

160. *Wood v. Groh*, 7 P.3d 1163, 1173 (Kan. 2000) (presenting testimony of Linda Wood).

161. See KAN. STAT. ANN. § 8-222 (1991).

The motor vehicle statute was not repealed by the enactment of the Kansas comparative negligence statute in 1974.<sup>162</sup> Moreover, it provides an avenue for the courts to modify their interpretation of the comparative negligence statute.

### 3. *The Transition From Comparative Negligence To Joint and Several Liability*

When the Kansas Legislature adopted the comparative negligence statute, it had two purposes in mind.<sup>163</sup> First, it created a method for a plaintiff to recover at least some compensation for damages, even though the plaintiff was partially at fault.<sup>164</sup> Prior to this act, plaintiffs were not entitled to recover damages if they were even slightly at fault.<sup>165</sup> The second goal of this statute was to eliminate oppressive payment of judgments by the defendants.<sup>166</sup> In joint and several liability, joint defendants are equally responsible for the full amount of the judgment awarded to the plaintiff.<sup>167</sup> If defendant A does not pay a portion of the judgment, then defendant B is obligated to pay the entire award.<sup>168</sup> Under the comparative negligence statute, joint defendants only pay a portion of the judgment as apportioned by the jury.<sup>169</sup>

The basis for Kansas Statutes Annotated section 60-258a is to create equality among parties, to prevent unjust enrichment of the plaintiff or undue burden on the defendant.<sup>170</sup> The statute, however, does *not* include language that joint and several liability is abrogated in Kansas.<sup>171</sup> The Kansas Supreme Court, however, has unilaterally phased out joint and several liability.<sup>172</sup> True, the lower courts cannot and should not be allowed to pick and choose which civil liability cases will be based on comparative negligence or joint and several liability. However, the statute reads in a flexible manner as to enable the Kansas Supreme Court to select certain classes of cases for which joint and

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162. See KAN. STAT. ANN. § 60-258a (1995). It is important to point out that the motor vehicle statute does not eliminate underage driving, it merely places liability on the parent. See *id.* This is another cultural trait of Kansas, as an agrarian society, where children are involved in the harvest and drive vehicles for this purpose.

163. See *Brown v. Keill*, 580 P.2d 867, 870 (Kan. 1978). This case is one of the first to deduce the intent of the legislature in the Kansas comparative negligence statute. See *id.* at 870-71.

164. See *id.*

165. See *id.* at 870-71.

166. See *id.* at 870.

167. See *id.*

168. See *id.*

169. See *id.* at 874.

170. See *id.* at 870.

171. See KAN. STAT. ANN. § 60-258a (1995). Commentators writing on the subject could not definitively state that the intent of the Kansas Legislature was to abrogate joint and several liability. See *Brown*, 580 P.2d at 873 (citing James F. Davis, *Comparative Negligence - A Look at the New Kansas Statute*, 23 U. KAN. L. REV. 113, 123 (1974) (finding that the statute "appears" to repeal joint and several liability); Henry Woods, *The New Kansas Comparative Negligence Act -- An Idea Whose Time Has Come*, 14 WASHBURN L.J. 1, 13 (1975) (stating that the statute "apparently abolishes joint and several liability in comparative negligence cases."))

172. See *Brown*, 580 P.2d at 874 (Kan. 1978).

several liability applies. Parental liability for a child's misuse of a gun is such a class. The Kansas Supreme Court missed the opportunity to bridge the gap between parental negligence and liability when deciding *Wood v. Groh*.<sup>173</sup> Such an act would have sent a message to all parents that accountability comes with gun ownership. A parent who could have prevented the child from negligently using the gun should be as liable as the child.

## V. CONCLUSION

The Kansas Supreme Court cannot wait for the legislature to enact a Child Access Prevention Law or draft a law similar to the motor vehicle statute. The court has the tools available to declare that parents shall be jointly and severally liable when their child misuses a parent's gun. Establishing parental liability for the child's misuse of their gun is a small, yet significant step in reducing gun-related violence among children. The ultimate goal of this type of reform is to make certain classes of gun owners more accountable for their firearms. With this proclamation, the court could proudly declare that it laid the corner stone in modern gun control.

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173. *See generally* *Wood v. Groh*, 7 P.3d 1163 (Kan. 2000). In this case, the court felt the Grohs could be found negligent in their method of gun storage. *See id.* at 1170. Additionally, they had no idea where their son was on the night in question. *See id.* at 1167. Thus, the jury found they were negligent in supervising their son. *See id.* The Groh's negligence significantly contributed to Ed's eventual negligence in shooting Sarah Wood. Therefore, when the court found that liability must be analyzed under the comparative negligence statute, a gap was created between the level of negligence of the parents and their subsequent liability. This does not fairly compensate the injured party, as evident in this case where the jury found the Grohs ten-percent liable.