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# Watch or Report? Livestream or Help? Good Samaritan Laws Revisited: The Need To Create a Duty to Report

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# WATCH OR REPORT? LIVESTREAM OR HELP? GOOD SAMARITAN LAWS REVISITED: THE NEED TO CREATE A DUTY TO REPORT

PATRICIA GRANDE MONTANA\*

## ABSTRACT

In July 2017, a group of five Florida teenagers taunted a drowning disabled man while filming his death on a cell phone. In the video, the teenagers laughed and shouted harsh statements like “ain’t nobody finna to help you, you dumb bitch.” At the moment the man’s head sank under the water for the very last time, one of the teenagers remarked: “Oh, he just died” before laughter ensued. None of the teenagers helped the man, nor did any of them report the drowning or his death to the authorities.

Because the Good Samaritan law in Florida, like in most states, does not require bystanders to assist another person who they know is in danger or is suffering serious physical harm, the teenagers who chose to film, rather than aid, the drowning disabled man are free of any liability. They face no penalties for their inaction and no punishment for their callousness.

This Article urges states to revisit traditional Good Samaritan laws. States need to consider penalizing a person’s failure to aid when another person is clearly in danger of physical harm or death. This need is particularly great given the power of social media and its intersection with a bystander’s ability and decision to help. As technology advances, relationships have become increasingly impersonal, thereby diminishing the individual’s connection to and compassion for others. Social media has added a new dimension to the longstanding debate of whether laws should impose on bystanders a duty to help. In cases where a bystander is observing a crime online, the individual can meet the duty quite simply by alerting authorities to the crime or danger. And in cases where the circumstances might tempt a bystander to use social media rather than provide help, the legal duty will compel the more moral choice. Accordingly, states should adopt duty to aid statutes mandating that bystanders give aid or call for help when they can.

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*“Yea we just saw [a man] die, we could’ve helped his ass.  
We didn’t even try to help him.”<sup>1</sup>*

In March 2017, a fifteen-year-old girl in Chicago was sexually assaulted by six men as they livestreamed the assault on Facebook.<sup>2</sup> At least forty people watched the vicious attack yet did nothing to help.<sup>3</sup> Not one of the dozens of spectators called the police.<sup>4</sup> Only after the victim’s mother reported the assault and showed authorities screen grabs of the attack did the police even learn that the attack was livestreamed for the public to view and potentially stop.<sup>5</sup>

Later, in July 2017, a group of five Florida teenagers taunted a drowning disabled man while filming his death on a cell phone.<sup>6</sup> From the shore, the teenagers mocked, cursed, and laughed at the disabled man while he was drowning in a retention pond, struggling for his life and screaming for help.<sup>7</sup> Viewers of the video can hear the teenagers laughing and shouting harsh statements like “ain’t nobody finna to help you, you dumb bitch.”<sup>8</sup> At the moment the man’s head went under the water for the last time, one of the teenagers remarked: “Oh, he just died” before laughter ensued.<sup>9</sup> None of the teenagers helped the man,<sup>10</sup> nor did any of them report the drowning or his death to the authorities.<sup>11</sup> Instead, they laughed about the man’s drowning death and later

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<sup>1</sup> For the Florida teenager’s cell phone video recording of the drowning disabled man in Cocoa, Florida, see *Disabled Man Pleading for Help Drowns as Teens Laugh and Mock*, YOUTUBE (July 20, 2017) [hereinafter *Disabled Man Pleading for Help*], [https://youtu.be/e3zD\\_Y2sGqY](https://youtu.be/e3zD_Y2sGqY).

<sup>2</sup> Michael Tarm, *Facebook Live Attack Stirs Questions About Witnessing Crimes Online*, CHI. TRIB. (Mar. 23, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-facebook-live-attack-stirs-questions-about-witnessing-crimes-online-20170323-story.html>.

<sup>3</sup> David Schaper, *Should Viewers of Facebook Live Gang Rape Face Charges?*, NPR (Apr. 4, 2017), <http://www.npr.org/2017/04/04/522574666/should-viewers-of-facebook-live-gang-rape-face-charges>; Tarm, *supra* note 2.

<sup>4</sup> Schaper, *supra* note 3.

<sup>5</sup> Rosa Flores & Susannah Cullinane, *2 Teens Arrested in Chicago Sex Assault Streamed Online*, CNN (Apr. 3, 2017), <http://www.cnn.com/2017/04/02/us/chicago-facebook-gang-rape-arrest/index.html>.

<sup>6</sup> Niraj Chokshi, *Teenagers Recorded a Drowning Man and Laughed*, N.Y. TIMES (July 21, 2017), <https://www.nytimes.com/2017/07/21/us/video-drowning-teens-florida.html>; *Disabled Man Pleading for Help*, *supra* note 1.

<sup>7</sup> Chokshi, *supra* note 6.

<sup>8</sup> *Disabled Man Pleading for Help*, *supra* note 1.

<sup>9</sup> Chokshi, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

posted the video with their perverse commentary on social media.<sup>12</sup> Ultimately, a family member of the victim spotted the video online and shared it with authorities.<sup>13</sup>

Cases like these illustrate a disturbing trend: an increase in both the livestreaming of crimes<sup>14</sup> and the filming of accidents or disastrous events for posting online to boost traffic to personal social media sites.<sup>15</sup> This trend is even more disturbing when situations have bystanders present who could have helped prevent or stop the crime or tragedy but did not, clearly valuing a relationship with social media more than a moral responsibility to help others.<sup>16</sup>

Because the Good Samaritan laws in both Illinois and Florida, like in most states, do not require bystanders to assist another person who they know is in danger or suffering serious physical harm,<sup>17</sup> the online spectators who did not stop the sexual assault of the fifteen-year-old girl in Chicago or the teenagers who filmed the drowning disabled man in Florida are free from any liability. They face no penalties for their inaction and no punishment for their callousness. In both cases, the bystanders could have easily helped. In fact, a simple call to authorities might have resulted in very different outcomes for both victims.<sup>18</sup> Yet, with few exceptions, Good Samaritan

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<sup>12</sup> *Id.*; see *Disabled Man Pleading for Help*, *supra* note 1.

<sup>13</sup> Chokshi, *supra* note 6.

<sup>14</sup> Alene Tchekmedyan & Alexandra Zavis, *The Cleveland Killer Wasn't the First to Post a Gruesome Crime. Welcome to the Dark Side of Sharing*, L.A. TIMES (Apr. 19, 2017), <http://www.latimes.com/nation/la-na-livestream-crime-20170418-story.html>.

<sup>15</sup> Jillian Peterson & James Densley, *Why the Trend of Posting Gruesome Acts Online?*, STAR TRIB. (Apr. 19, 2017), <http://www.startribune.com/why-the-trend-of-posting-gruesome-acts-online/419900553/>; Amelia J. Uelmen, *Crime Spectators and the Tort of Objectification*, 12 U. MASS. L. REV. 68, 77, 80 (2017) (explaining how there are “frequent accounts of bystanders gathering to snap cell phone pictures of assaults, rapes, and even murders, as well as more run-of-the-mill accidents” partly to “satisfy[] [a] captive online audience.” (footnote omitted)). This “phenomenon reflects a culture that has become so desensitized to violence that observers barely flinch when taking out their cameras and hitting record . . .” *Id.* at 80; *but see* David A. Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEX. L. REV. 653, 656 (2006) (finding that proven cases of non-rescues are “extraordinarily rare,” and thus there is no need to change the laws to require a duty to rescue).

<sup>16</sup> “[A] bystander’s decision to engage the scene indicates that he or she has already ‘prioritized’ his or her time and attention [over the victim’s needs].” Uelmen, *supra* note 15, at 115–16; *see id.* at 92, 108 (arguing that a legal obligation should not apply to “pure bystanders”—those who pass by and otherwise disengage from the scene of the crime or accident—but should attach to “engaged spectators”—bystanders who directly engage the scene and the victim by either objectifying or exploiting the victim).

<sup>17</sup> FLA. STAT. § 768.13 (2017); 745 ILL. COMP. STAT. 49/1 *et seq.* (2018); *see also* Jen Fifield, *Why It’s Hard to Punish ‘Bad Samaritans’*, PEW CHARITABLE TR. (Sept. 19, 2017), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/09/19/why-its-hard-to-punish-bad-samaritans>.

<sup>18</sup> In both cases, the bystanders made a “deliberate decision to treat the incident as a show rather than a traumatic human emergency which would have required direct assistance or a call for help.” Uelmen, *supra* note 15, at 109; *see also* Steven J. Heyman, *Foundations of the Duty to Rescue*, 47 VAND. L. REV. 673, 755 (1994) (arguing that “rescuer and victim are not mere strangers, but members of a broader community” and thus “the community has a responsibility to protect its citizens from both criminal violence and other forms of harm”).

laws do not mandate that bystanders help in any way,<sup>19</sup> nor do those laws require that bystanders alert authorities when they know someone needs help.<sup>20</sup>

This Article urges states to revisit these traditional Good Samaritan laws. States should consider penalizing a person's failure to aid when another person is clearly in danger of physical harm or death. This need is particularly great given the power of social media and its intersection with a bystander's ability and decision to help. As technology advances, relationships have become increasingly impersonal, thereby wearing at an individual's connection to and compassion for others. Social media has added a new dimension to the longstanding debate of whether laws should impose a duty to help on bystanders.<sup>21</sup> In cases where a bystander is observing a crime online, a bystander can meet this duty to help quite simply by alerting authorities to the crime or danger. And in cases where a bystander might be tempted to use social media rather than help, the legal duty will compel the latter, more moral choice.

Thus, this Article argues that lawmakers need to change the Good Samaritan laws to add, at a minimum, a duty to report requirement, whereby bystanders would be required to contact law enforcement or emergency personnel when they see or otherwise know that another person is in danger or the victim of a crime. The Good Samaritan laws should punish bystanders who sit idly by as another person is suffering and ideally punish even more harshly those individuals who choose to record that suffering for personal enjoyment or gain.<sup>22</sup>

To that end, this Article first examines current Good Samaritan laws and discusses the few that presently have a duty to report requirement or like equivalent. Next, this Article explores the reasons why states have historically rejected laws imposing on others a duty to render aid. The resistance to imposing such a duty generally stems from concerns over interfering with individual autonomy and legislating morality as

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<sup>19</sup> DECHERT LLP, SAVE LIFE FOUND., THOMSON REUTERS FOUND., GOOD SAMARITAN LAWS 3 (2014), <https://www.trust.org/contentAsset/raw-data/7be34cce-ea0d-4c90-8b39-53427acf4c43/file> (“The majority of U.S. jurisdictions . . . do not impose an affirmative obligation as part of the Good Samaritan statutes.”).

<sup>20</sup> Fifield, *supra* note 17.

<sup>21</sup> See Uelmen, *supra* note 15, at 75.

Concerns about a particular form of “mocking and maligning” have crystallized with the pervasive presence of recording devices such as cell phones. . . . [T]hose who take cell phone pictures are hardly ignoring the victim or doing nothing. Rather, they are engaging the attack by focusing on it, and filming or photographing it. Such conduct objectifies and exploits another human being precisely at a moment in which this person is vulnerable. In many situations, this objectification and exploitation is exacerbated by subsequently posting the photograph or video recording on social media.

*Id.*

<sup>22</sup> Discussions have concerned whether it should be a crime to livestream a crime or share videos of a crime online. For example, New York State Senator Phil Boyle has proposed legislation that would make the broadcast or distribution of footage of criminal activity by the perpetrator a fourth-degree crime, carrying potential penalties of up to forty-eight months in prison, a fine, or a combination of both. *NY Senator: Outlaw Streaming Violence on Social Media*, U.S. NEWS (Apr. 28, 2017), <https://www.usnews.com/news/best-states/new-york/articles/2017-04-28/ny-senator-outlaw-streaming-violence-on-social-media>. Notably, the legislation applies to the perpetrators only, not bystanders; bystanders who film a crime while it is occurring would be exempt. *Id.*

well as the practical constraints on enforcing such a law efficiently and fairly.<sup>23</sup> Finally, this Article explains why those reasons no longer apply now that technology has made reporting seamless. Even so, stronger public policy considerations outweigh those reasons, including, among other public policy considerations, stopping crimes and preventing physical harm where possible, deterring immoral and harmful behavior, and increasing personal and civic responsibility to help others in need. Accordingly, states that have not done so already or have done so only narrowly should quickly move to adopt broad duty to report statutes and counter the trend of bystander inaction and callousness.

## I. GOOD SAMARITAN LAWS: A REVIEW

### *A. Most Good Samaritan Laws Provide Civil Immunity but Require No Duty to Help*

All states, including the District of Columbia, currently have some form of a Good Samaritan statute.<sup>24</sup> Good Samaritan statutes typically provide civil immunity to individuals who render aid at the scene of an emergency to another person whom they believe is injured or in serious threat of injury.<sup>25</sup> This immunity usually extends to health care professionals or other licensed or trained individuals when they are assisting without compensation.<sup>26</sup> Regardless of who is giving the aid, the immunity almost never covers individuals who render aid in a grossly negligent or reckless manner,<sup>27</sup> nor do these statutes provide the same protection from a civil suit to compensated health care professionals or other licensed or trained individuals.<sup>28</sup> Though other provisions may cover such professionals, their duties are different and usually higher than individuals who volunteer their help and have no expertise or training in emergency medical situations.<sup>29</sup> Some statutes are more specific in their

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<sup>23</sup> See generally Joshua Dressler, *Some Brief Thoughts (Mostly Negative) About “Bad Samaritan” Laws*, 40 SANTA CLARA L. REV. 971 (2000) (refuting justifications for Bad Samaritan laws).

<sup>24</sup> D.C. CODE § 7–401 (2017); Hyman, *supra* note 15, at 679.

<sup>25</sup> See, e.g., ARK. CODE ANN. § 17–95–101 (2017); DEL. CODE ANN. tit. 16, § 6801 (2017); MD. CODE ANN., CTS. & JUD. PROC. § 5–603 (West 2017); N.D. CENT. CODE § 32–03.1–02 (2017); OHIO REV. CODE ANN. § 2305.23 (West 2017).

<sup>26</sup> E.g., ARK. CODE ANN. § 17–95–101(a) (2017) (“Any health care professional . . . who in good faith lends emergency care or assistance *without compensation* at the place of an emergency or accident shall not be liable for any civil damages . . .” (emphasis added)).

<sup>27</sup> E.g., *id.* § 17–95–101(b)(2) (“[U]nless the act or omission was not in good faith and was the result of gross negligence or willful misconduct.”); DEL. CODE ANN. tit. 16, § 6801(a) (2017) (“[U]nless it is established that such injuries or such death were caused willfully, wantonly or recklessly or by gross negligence on the part of such person.”); MD. CODE ANN., CTS. & JUD. PROC. § 5–603(a)(1) (West 2017) (extending civil immunity only if “[t]he act or omission is not one of gross negligence . . .”); N.D. CENT. CODE § 32–03.1–02 (2017) (“[U]nless it is plainly alleged in the complaint and later proven that such person’s acts or omissions constituted intentional misconduct or gross negligence.”); OHIO REV. CODE ANN. § 2305.23 (West 2017) (“[U]nless such acts constitute willful or wanton misconduct.”).

<sup>28</sup> E.g., OHIO REV. CODE ANN. § 2305.23 (West 2017) (“Nothing in this section applies to the administering of such care or treatment where the same is *rendered for remuneration*, or *with the expectation of remuneration* . . .” (emphasis added)).

<sup>29</sup> E.g., *id.*

protections.<sup>30</sup> For example, a number of states now have particularized protection for individuals who use an automated external defibrillator while rendering care,<sup>31</sup> but overall, the Good Samaritan statutes of most states have very few substantive differences.

Arkansas's Good Samaritan statute is a nice illustration of a typical, well-organized statute that broadly extends liability to bystanders, both those with and without training, and precludes liability only under the narrowest of circumstances.<sup>32</sup> The first part of the statute addresses when health care professionals who give aid voluntarily—not for pay—will be protected. That portion of the statute reads as follows:

(a) Any health care professional under the laws of the State of Arkansas who in good faith lends emergency care or assistance without compensation at the place of an emergency or accident shall not be liable for any civil damages for acts or omissions performed in good faith so long as any act or omission resulting from the rendering of emergency assistance or services was not grossly negligent or willful misconduct.<sup>33</sup>

The second part of the statute addresses the circumstances under which an average person will be protected. It reads as follows:

(b) Any person who is not a health care professional who is present at an emergency or accident scene and who:

(1) Believes that the life, health, and safety of an injured person or a person who is under imminent threat of danger could be aided by reasonable and accessible emergency procedures under the circumstances existing at the scene thereof; and

(2) Proceeds to lend emergency assistance or service in a manner calculated in good faith to lessen or remove the immediate threat to the life, health, or safety of such a person, shall not be held liable in civil damages in any action in this state for any act or omission resulting from the rendering of

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<sup>30</sup> See, e.g., ARK. CODE ANN. § 17-95-101(c) (2017) (extending immunity to volunteer health care professionals who render “emergency assistance to a participant in a school athletic event or contest . . . .” (emphasis added)); 42 PA. CONS. STAT. § 8331.3(a) (2017) (providing protection specifically from civil liability to those persons who attempt to help a “victim of a personal injury crime . . . .”).

<sup>31</sup> See, e.g., IND. CODE § 34-30-12-1(c) (2017) (“A person who gratuitously renders emergency care involving the use of an automatic external defibrillator is immune from liability for any act or omission not amounting to gross negligence or willful or wanton misconduct . . . .” (emphasis added)); IOWA CODE § 613.17(2) (2017) (“[A person] who render[s] emergency care or assistance relating to the preparation for and response to a sudden cardiac arrest emergency, shall not be liable for any civil damages for acts or omissions arising out of the use of an automated external defibrillator . . . .” (emphasis added)).

<sup>32</sup> ARK. CODE ANN. § 17-95-101 (2017).

<sup>33</sup> *Id.* § 17-95-101(a).

emergency assistance or services unless the act or omission was not in good faith and was the result of gross negligence or willful misconduct.<sup>34</sup>

Historically, the purpose of Good Samaritan statutes was to encourage bystanders to help those in danger when they can.<sup>35</sup> Subjecting bystanders to civil liability would be unfair, as would penalizing them for making mistakes when acting in good faith and giving help to another in obvious need of care. Therefore, as exemplified in the Arkansas statute above, states chose to protect good Samaritans by extending immunity to them even if they were negligent in their care.<sup>36</sup> The rationale was that with this known immunity, bystanders would be more inclined to help, consequently preventing more injuries and saving more lives.<sup>37</sup> At the same time, states wanted to ensure that bystanders were careful in the way they rendered aid.<sup>38</sup> To this end, as also exemplified in the Arkansas statute above, most states carved out exceptions for grossly negligent, reckless, or willful misconduct so that bystanders could not make emergency situations worse for an already injured individual without incurring liability.<sup>39</sup>

Importantly, most Good Samaritan statutes focus solely on protecting those who *choose* to act and render aid to someone in need.<sup>40</sup> The statutes do not require that bystanders act and render aid, even if providing aid is possible and would involve little

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<sup>34</sup> *Id.* § 17–95–101(b)–(b)(2). The statute has two other sections: one definitional and the other more substantive. The definitional section lists licensed and trained individuals who qualify as “health care professionals” within the meaning of the statute. *Id.* § 17–95–101(d). The additional substantive section addresses a specific circumstance where a volunteer health care professional renders help to an individual at a school athletic event. *Id.* § 17–95–101(c).

<sup>35</sup> *See, e.g.,* *Mueller v. McMillian Warner Ins.*, 714 N.W.2d 183, 189 (Wis. 2006) (“The purpose of the [Good Samaritan] statute is to encourage individuals to provide emergency care to an injured person by immunizing the caregivers from common-law liability if they fail to exercise reasonable care when rendering emergency care in good faith.”); *Swenson v. Waseca Mut. Ins.*, 653 N.W.2d 794, 797 (Minn. Ct. App. 2002) (“The purpose of the [Good Samaritan] statute is to encourage laypersons to help those in need, even when they are under no legal obligation to do so, by providing immunity from liability claims arising out of an attempt to assist a person in peril.” (citation omitted)); *Hardingham v. United Counseling Serv.*, 672 A.2d 480, 483 (Vt. 1995) (explaining how the legislature created the partial immunity under its Duty to Aid the Endangered Act “largely to allay the litigation fears of medical professionals and other would-be rescuers.”). In *Hardingham*, the Vermont Supreme Court further explained that one of the purposes of its Act is to encourage rescuers to assist others by:

shielding them from civil liability for acts of ordinary negligence committed during the rescue. If rescuers were forced to go through an expensive trial any time there was the slightest evidence of ordinary negligence, even if it were clear that gross negligence was not present, the purpose of the statute would be thwarted.

*Id.*

<sup>36</sup> *See* ARK. CODE ANN. § 17–95–101(b)(2) (2017).

<sup>37</sup> *DECHERT LLP, supra* note 19, at 3.

<sup>38</sup> *Id.*

<sup>39</sup> *See* ARK. CODE ANN. § 17–95–101(b)(2) (2017).

<sup>40</sup> *See* PLAINTIFF’S PROOF PRIMA FACIE CASE § 13:4 (West 2017).



effort on the part of the bystander.<sup>41</sup> To reiterate, most statutes do not impose any duty to help on an average bystander.<sup>42</sup> The Good Samaritan statute applies only after a bystander elects to give aid and does so in good faith.<sup>43</sup> In sum, these statutes essentially protect bystanders who help, but generally do not mandate that they must help.<sup>44</sup>

*B. There Are a Few Good Samaritan Laws That Require a Duty to Aid*

Although an overwhelming majority of state statutes do not impose on bystanders any duty to help,<sup>45</sup> a few states have mandated this duty, even if only under very limited circumstances.<sup>46</sup> These states include: Alaska, California, Colorado, Florida, Hawaii, Massachusetts, Minnesota, Nevada, Ohio, Rhode Island, Texas, Vermont, Washington, and Wisconsin.<sup>47</sup> Though each statute requires some duty to assist, the types of duties required generally fall into three categories; from the broadest to the narrowest, the duties are: (1) a duty to give aid to someone who is in danger; (2) a duty to give aid to a victim of a crime; and (3) a duty to give aid to a child victim or victim of a specific crime involving a sexual assault or battery.

1. Duty to Aid an Endangered Person

A few states have expansive duty to assist statutes that require individuals to help simply when they know that another person is in serious danger and can help without creating any danger for themselves or others.<sup>48</sup> To date, these states include: Vermont, Minnesota, and Rhode Island.<sup>49</sup> For example, Vermont's duty to assist statute states as follows:

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Fifield, *supra* note 17.

<sup>47</sup> ALASKA STAT. § 11.56.765 (2017); CAL. PENAL CODE § 152.3 (West 2017); COLO. REV. STAT. § 18–8–115 (2017); FLA. STAT. § 794.027 (2017); HAW. REV. STAT. § 663–1.6 (2017); MASS. GEN. LAWS ch. 268, § 40 (2017); MINN. STAT. § 604A.01 (2017); NEV. REV. STAT. § 202.882 (2017); OHIO REV. CODE ANN. § 2921.22 (West 2017); R.I. GEN. LAWS § 11–56–1 (2017); TEX. PENAL CODE ANN. § 38.17 (West 2017); VT. STAT. ANN. tit. 12, § 519(a) (2017); WASH. REV. CODE § 9.69.100 (2017); WIS. STAT. § 940.34(2)(a) (2017).

<sup>48</sup> Some states have duty to aid statutes in specific contexts where a person's actions either caused or otherwise contributed to the injury or danger. In those cases, the person has a clear duty to provide assistance to the injured person. *See, e.g.*, KAN. STAT. ANN. § 8–1604(a)(2) (2017) (stating that the driver of a vehicle involved in an accident has a duty to render aid); WYO. STAT. ANN. § 41–13–105(a) (2017) (stating that the operator of a watercraft has a duty to render aid when involved in collision). These statutes are distinct, however, because the individual's actions create the duty, not his or her mere knowledge of an injury or presence at the scene of an emergency.

<sup>49</sup> MINN. STAT. § 604A.01 (2017); R.I. GEN. LAWS § 11–56–1 (2017); VT. STAT. ANN. tit. 12, § 519(a) (2017).

A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.<sup>50</sup>

But some exceptions to this duty exist. For instance, when giving assistance would cause danger to the person or interfere with duties that person might owe to another, the person is not obligated to give assistance.<sup>51</sup> Notably, the duty requires that the person give only “reasonable assistance.”<sup>52</sup> Additionally, the penalty for “willfully violat[ing]” the statute is a nominal fine of not more than \$100.<sup>53</sup>

Minnesota’s and Rhode Island’s duty to assist statutes are substantially similar to Vermont’s, both requiring that a “person at the scene of an emergency” assist another person who is “exposed to or has suffered grave physical harm . . . .”<sup>54</sup> The Minnesota statute defines “reasonable assistance” to include the simple step of “obtaining or attempting to obtain aid from law enforcement or medical personnel.”<sup>55</sup> A person who violates the Minnesota statute is guilty of a petty misdemeanor, which has a maximum fine of \$300.<sup>56</sup> The penalty for violating the Rhode Island statute is slightly greater: a guilty person may be subject to imprisonment for a term not exceeding six months, a maximum fine of \$500, or both.<sup>57</sup>

The important feature of these three statutes is that they impose on bystanders a broad duty to give reasonable assistance to anyone who is or might be in danger of grave physical harm. Bystanders have this duty regardless of whether that harm resulted from an accident, crime, or other type of emergency.

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<sup>50</sup> VT. STAT. ANN. tit. 12, § 519(a) (2017). In *State v. Joyce*, the Supreme Court of Vermont considered the scope of Vermont’s duty to rescue statute in the context of a jury instruction in a defendant-father’s trial for an assault on his minor child. *State v. Joyce*, 433 A.2d 271 (Vt. 1981). Five witnesses observed him knocking his son to the ground and repeatedly kicking him in the side and on the head, but none of them intervened or summoned assistance. *Id.* at 272–73. The defendant-father, allegedly intoxicated at the time, argued that his acts must not have been intentional because if they had been, any reasonable person witnessing the beating would have intervened. *Id.* The defendant-father appealed the court’s instruction to the jury that a bystander had no legal obligation to help. *Id.* at 273. The Supreme Court of Vermont clarified that the statute did in fact impose such a duty, but it did not apply in this situation because the witnesses were not required to intervene in a fight, as the situation presented a “danger or peril” to the bystanders, an exception under the statute. *Id.*

<sup>51</sup> VT. STAT. ANN. tit. 12, § 519(a) (2017).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* § 519(c).

<sup>54</sup> MINN. STAT. § 604A.01(1) (2017); R.I. GEN. LAWS § 11–56–1 (2017).

<sup>55</sup> MINN. STAT. § 604A.01(1) (2017).

<sup>56</sup> *Id.*; MINN. R. CRIM. PROC. 23.01 (2017).

<sup>57</sup> R.I. GEN. LAWS § 11–56–1 (2017).

## 2. Duty to Aid a Victim of Any Crime

A few states have more limited duty to assist statutes that mandate individuals help only when a crime is involved.<sup>58</sup> These statutes are less expansive because a person has no duty to help someone who suffers grave physical harm resulting from an accident or other danger.<sup>59</sup> The bystander is only obligated to help when that harm is the result of a crime.<sup>60</sup> To date, five states—Colorado, Hawaii, Massachusetts, Ohio, and Wisconsin—have set out penalties for bystanders who know that a crime is being committed yet fail to act.<sup>61</sup>

For example, Colorado’s duty to report a crime statute states that “[i]t is the duty of every . . . person who has reasonable grounds to believe that a crime has been committed to report promptly the suspected crime to law enforcement authorities.”<sup>62</sup>

Hawaii’s duty to assist statute makes it a petty misdemeanor for a person at the scene of a crime to fail to “obtain aid from law enforcement or medical personnel” when that person knows that a “victim of [a] crime is suffering from serious physical harm . . . .”<sup>63</sup>

Similarly, Wisconsin’s statute, titled *Duty to Aid Victim or Report Crime*, reads as follows: “Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.”<sup>64</sup>

Ohio’s duty to report a crime statute imposes a similar duty to the one imposed in Wisconsin, but only when the crime is a felony.<sup>65</sup> Specifically, Ohio’s statute requires that any person who “know[s] that a felony has been or is being committed” must report that information to law enforcement officials.<sup>66</sup> Likewise, Massachusetts has a statute that requires reporting only serious crimes against the person, such as crimes

<sup>58</sup> COLO. REV. STAT. § 18–8–115 (2017); HAW. REV. STAT. § 663–1.6(a) (2017); MASS. GEN. LAWS ch. 268, § 40 (2017); OHIO REV. CODE ANN. § 2921.22(A)(1) (West 2017); WIS. STAT. § 940.34(2)(a) (2017).

<sup>59</sup> See COLO. REV. STAT. § 18–8–115 (2017); HAW. REV. STAT. § 663–1.6 (2017); MASS. GEN. LAWS ch. 268, § 40 (2017); OHIO REV. CODE ANN. § 2921.22(A)(1) (West 2017); WIS. STAT. § 940.34(2)(a) (2017).

<sup>60</sup> *E.g.*, OHIO REV. CODE ANN. § 2921.22(A)(2) (West 2017) (“No person, knowing that a [felony] has been, or is being committed . . . shall knowingly fail to report [such information] to law enforcement authorities.”).

<sup>61</sup> COLO. REV. STAT. § 18–8–115 (2017); HAW. REV. STAT. § 663–1.6(a) (2017); MASS. GEN. LAWS ch. 268, § 40 (2017); OHIO REV. CODE ANN. § 2921.22(A)(1) (West 2017); WIS. STAT. § 940.34(2)(a) (2017).

<sup>62</sup> COLO. REV. STAT. § 18–8–115 (2017).

<sup>63</sup> HAW. REV. STAT. § 663–1.6(a) (2017). In *State v. Cabral*, the Hawaiian Intermediate Court of Appeals explained how this provision “applies to the perpetrator of the crime as well as other persons at the scene of a crime.” *State v. Cabral*, 810 P.3d 672, 677 (Haw. Ct. App. 1991).

<sup>64</sup> WIS. STAT. § 940.34(2)(a) (2017).

<sup>65</sup> OHIO REV. CODE ANN. § 2921.22(A)(1) (West 2017).

<sup>66</sup> *Id.*

of “rape, murder, manslaughter or armed robbery . . . .”<sup>67</sup> When a person “is at the scene of [a] crime” and “knows that another person is a victim of” a serious crime, that person must “report” it to law enforcement officials “as soon as reasonably practicable.”<sup>68</sup>

The Hawaii, Massachusetts, and Wisconsin statutes all provide for explicit exceptions for situations where complying with the law places the person in danger or interferes with that person’s duties to another.<sup>69</sup>

The penalties for violating a duty to aid a crime victim statute typically are relatively minor, resulting in either a fine or misdemeanor charge.<sup>70</sup> For example, in Wisconsin, anyone who violates the statute is guilty of a Class C misdemeanor, which translates into a fine of under “\$500 or [an] imprisonment not to exceed [thirty] days, or both.”<sup>71</sup>

Interestingly, at least one successful prosecution occurred under Wisconsin’s duty to aid statute.<sup>72</sup> In that case, a jury convicted Karie LaPlante for failing to call for help and not rendering any aid to a victim—a guest in her home—while seven of her other guests brutally beat the victim during a party.<sup>73</sup> Earlier in the evening, one of the party-goers had told LaPlante that he intended to physically assault the victim.<sup>74</sup> LaPlante witnessed the beating firsthand, but never attempted to aid the victim or summon other assistance.<sup>75</sup> As LaPlante’s failure to act was in direct violation of Wisconsin’s statute, the state charged and obtained a conviction against her for violating it.<sup>76</sup>

Though LaPlante challenged her conviction on constitutional grounds, she failed to show that the statute was either vague or unconstitutional as applied to her.<sup>77</sup> The Wisconsin Court of Appeals held that the statutory duty to aid or report a crime is quite easy to satisfy, as LaPlante “simply had to call for assistance or render it herself.”<sup>78</sup> Because the statute is “devoid of any mandate that an individual identify

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<sup>67</sup> MASS. GEN. LAWS ch. 268, § 40 (2017).

<sup>68</sup> *Id.*

<sup>69</sup> HAW. REV. STAT. § 663–1.6(a) (2017) (creating an exception if a person cannot do so “without danger or peril to any person.”); MASS. GEN. LAWS ch. 268, § 40 (2017) (creating an exception if person cannot report “without danger or peril to himself or others . . . .”); WIS. STAT. § 940.34(2)(d)(1) (2017) (stating that a person need not comply if “[c]ompliance would place him or her in danger.”).

<sup>70</sup> *E.g.*, HAW. REV. STAT. § 663–1.6(a) (2017) (“Any person who violates this subsection is guilty of a petty misdemeanor.”); MASS. GEN. LAWS ch. 268, § 40 (2017) (stating that a failure to report is punished by a fine between \$500 and \$2,500); OHIO REV. CODE ANN. § 2921.22(I) (West 2017) (stating that a violation constitutes a misdemeanor of the fourth degree).

<sup>71</sup> WIS. STAT. § 939.51(3)(c) (2017).

<sup>72</sup> *See State v. LaPlante*, 521 N.W.2d 448 (Wis. Ct. App. 1994).

<sup>73</sup> *Id.* at 449.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 452.

<sup>78</sup> *Id.*

oneself when fulfilling the statute's requirements . . . [b]y calling for help, [she] would have been under no obligation to provide her name, nor would she have been required to provide any information as to why the victim was harmed."<sup>79</sup>

Had LaPlante fulfilled her simple obligation under the statute, she may have prevented the crime or mitigated the victim's injuries. The intention of statutes that impose a duty to aid a victim of a crime is to encourage bystanders, like LaPlante, to report criminal activity promptly to law enforcement officials so that such officials can more effectively investigate, prevent, stop, and prosecute crimes.<sup>80</sup>

### 3. Duty to Aid a Child Victim or Victim of a Sexual Assault or Battery

The most restrictive duty to assist statutes protect only a subset of the more vulnerable victims in society: child victims or victims of sexual assault and battery. Texas, Nevada, California, Alaska, Washington, and Florida are the few states that require bystanders, who otherwise have no statutory, contractual, or other relationship with the victim, either to assist or report to law enforcement officials when they are aware or should be aware that a child or another individual is a victim of a crime, particularly when that crime involves a sexual assault or battery.<sup>81</sup>

For example, Texas mandates a duty to aid and report in a very specific situation dealing with a sexual assault of a child.<sup>82</sup> The duty arises when an individual observes a crime against a child or has some reason to believe that a crime has happened or will happen.<sup>83</sup> Specifically, an individual who "observes the commission or attempted commission" of sexual abuse "under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against [a] child" must assist that child.<sup>84</sup> If that individual fails to help the child or immediately report what he or she knows to the proper authorities, he or she will have violated the statute and will be guilty of a misdemeanor.<sup>85</sup>

Likewise, Nevada makes failing to report a violent or sexual offense against a child who is twelve years old or younger a misdemeanor.<sup>86</sup> Therefore, any "person who

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<sup>79</sup> *Id.*

<sup>80</sup> *See, e.g.*, 1973 LEGIS. SERV. COMM'N REP., reprinted in OHIO REV. CODE ANN. § 2921.22 (West 2017) ("The rationale for requiring that serious crimes be reported is that effective crime prevention and law enforcement depend significantly on the cooperation of the public.").

<sup>81</sup> Most states have duty to report requirements for individuals who have or create some contractual or other relationship with the victim. *See* Marin Roger Scordato, *Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law*, 82 TUL. L. REV. 1447, 1459–63 (2008). The Texas, Nevada, California, Alaska, Washington, and Florida statutes are unique in that they impose the duty on someone who would not otherwise be obligated to help. ALASKA STAT. § 11.56.765 (2017); CAL. PENAL CODE § 152.3 (West 2017); FLA. STAT. § 794.027 (2017); NEV. REV. STAT. § 202.882 (2017); TEX. PENAL CODE ANN. § 38.17 (West 2017); WASH. REV. CODE § 9.69.100 (2017).

<sup>82</sup> TEX. PENAL CODE ANN. § 38.17(a)(1) (West 2017).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* § 38.17(b).

<sup>86</sup> NEV. REV. STAT. § 202.882(1)–(2).

knows or has reasonable cause to believe that another person has committed a violent or sexual offense against a child” must report the offense to a law enforcement agency.<sup>87</sup> The statute mandates that the person report “as reasonably practicable but not later than [twenty-four] hours” after learning of the offense.<sup>88</sup> Unlike other statutes, Nevada’s statute specifies the type of information that the person must report.<sup>89</sup> The report must include the names of the victim-child and perpetrator, the location of the offense, and any “facts and circumstances which support the person’s belief that the violent or sexual offense was committed.”<sup>90</sup>

California’s statute imposes a similar duty to Nevada’s with respect to child-victims, but includes crimes other than sexual assault within its ambit. In California, when a person “reasonably believes that he or she has observed the commission” of a murder, rape, or other similar offense, and the “victim is a child under [fourteen] years of age,” that person must notify a “peace officer.”<sup>91</sup> Similarly, in Alaska, a person who “witnesses what the person knows or reasonably should know” is a violent crime against a child under sixteen years of age must “report that crime to a peace officer or law enforcement agency” in a “timely manner.”<sup>92</sup> The statute lists murder, attempted murder, kidnapping, attempted kidnapping, sexual penetration, attempted sexual penetration, and assault as violent crimes.<sup>93</sup>

Washington’s duty to report statute applies broadly to any victim of a violent offense as well as specifically to sexual offenses against a child, particularly if an assault “appears reasonably likely to cause substantial bodily harm to the child . . . .”<sup>94</sup> Any person “who witnesses the actual commission” of the crime must “notify the prosecuting attorney, law enforcement, medical assistance, or other public officials” “as soon as reasonably possible.”<sup>95</sup>

Finally, Florida’s duty to report a sexual battery statute applies to a victim of any age, not just a child victim.<sup>96</sup> So long as the person “[h]as reasonable grounds to believe that he or she has observed the commission of a sexual battery,” that person must seek assistance for the victim or immediately report the offense to law enforcement officials.<sup>97</sup>

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<sup>87</sup> *Id.* § 202.882(1).

<sup>88</sup> *Id.* § 202.882(1)(b).

<sup>89</sup> *Id.* § 202.882(3)(a)–(c).

<sup>90</sup> *Id.* § 202.882(3)(c).

<sup>91</sup> CAL. PENAL CODE § 152.3(a)(1)–(3) (West 2017). The California Penal Code defines “peace officer” to include officials employed or appointed by public safety agencies, such as sheriffs, marshals, and police. *Id.* § 830.1(a).

<sup>92</sup> ALASKA STAT. § 11.56.765 (2017).

<sup>93</sup> *Id.* § 11.56.765(a)(1)(A)–(D).

<sup>94</sup> WASH. REV. CODE § 9.69.100(1)(c) (2017).

<sup>95</sup> *Id.* § 9.69.100(1)–(1)(c).

<sup>96</sup> FLA. STAT. § 794.027 (2017).

<sup>97</sup> *Id.* § 794.027(1)–(2).

These statutes generally have exceptions if the bystander or the bystander's family would be exposed to danger or threat of physical harm.<sup>98</sup> A failure to report under these statutes is typically a misdemeanor punishable by a fine, imprisonment in jail for less than six months, or a combination of both.<sup>99</sup> For example, the California statute makes a “[f]ailure to notify . . . a misdemeanor . . . punishable by a fine of not more than [\$1,500], by imprisonment in a county jail for not more than six months, or by both . . . .”<sup>100</sup>

The common thread to these statutes is the intent to encourage the public to report crimes that involve victims who might not be able to report on their own or might be afraid to report by virtue of their age or the impact the sexual assault or battery has had on their willingness and ability to do so. Moreover, crimes of sexual assault or battery are crimes that often involve perpetrators who are known to the victim and therefore have a likelihood of being repeated.<sup>101</sup> Thus, society has a great need for the public to step in and aid to prevent further victimization, particularly when a child is involved. Though this category of duty to aid statutes serves an important interest, it is limited in application and certainly not as far-reaching as the general duty to aid statutes of Vermont, Rhode Island, and Minnesota, which encourage public involvement irrespective of the cause of harm, the type of harm, or the age of the victim.<sup>102</sup>

## II. OBJECTIONS TO DUTY TO AID STATUTES

Although fourteen states have legislated some form of duty to aid statute, most states have not and do not seem to have any real momentum to do so.<sup>103</sup> Of the minority

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<sup>98</sup> ALASKA STAT. § 11.56.765(b)(1) (2017) (creating an exception if “the defendant reasonably believed that [reporting] would have exposed the defendant or others to a substantial risk of physical injury . . . .”); CAL. PENAL CODE § 152.3(e)(3) (West 2017) (creating an exception for “[a] person who fails to report based on a reasonable fear for his or her own safety or for the safety of his or her family.”); FLA. STAT. § 794.027(4) (2017) (creating an exception if seeking assistance would “expose[]” that person to “any threat of physical violence . . . .”); NEV. REV. STAT. § 202.888(4) (2017) (creating an exception for a person who “[k]nows or has reasonable cause to believe that reporting” would place the person or relative or any person residing in the same household of the person “in imminent danger of suffering substantial bodily harm.”); WASH. REV. CODE § 9.69.100(4) (2017) (creating an exception for a person who has “a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm.”).

<sup>99</sup> ALASKA STAT. § 11.56.765(d) (2017) (“Failure to report a violent crime committed against a child is a class A misdemeanor.”); FLA. STAT. § 794.027(6) (2017) (stating that failure to seek assistance amounts to a misdemeanor of the first degree); WASH. REV. CODE § 9.69.100(4) (2017) (stating that failure to notify constitutes “a gross misdemeanor”).

<sup>100</sup> CAL. PENAL CODE § 152.3(d) (West 2017).

<sup>101</sup> *Myths and Facts About Sexual Violence*, GEO. L., <https://www.law.georgetown.edu/campus-life/advising-counseling/personal-counseling/sarvl/general-information.cfm> (last visited Jan. 14, 2018).

<sup>102</sup> See discussion *supra* Section I.A.

<sup>103</sup> However, after national public outrage over tragedies like in Chicago and Florida, there was a renewed discussion concerning whether laws should require a duty to rescue. See, e.g., Gil Smart, Opinion, *After Cocoa Drowning Case, Do We Need ‘Duty to Rescue’ Law?*, USA TODAY (July 26, 2017), <https://www.usatoday.com/story/opinion/2017/07/26/smart-after-cocoa-drowning-case-do-we-need-duty-rescue-law/511851001/> (stating that Cocoa Police

of states that have legislated a duty to aid statute, only three—Vermont, Rhode Island, and Minnesota—have statutes that are broad enough to require that a bystander render aid when that bystander witnesses either a crime or an accident that exposes another to grave physical harm.<sup>104</sup> In other words, the Vermont, Rhode Island, and Minnesota statutes are the only statutes that would penalize both the online spectators who did nothing to help stop the sexual assault of the fifteen-year-old girl in Chicago and the teenagers who failed to give any aid to the drowning disabled man in Florida.

Although some of the remaining eleven duty to aid statutes might have applied to the online spectators to the sexual assault of the female minor, none of them would have applied to the teenage witnesses to the disabled man's drowning death.<sup>105</sup> The limited reach of existing duty to aid statutes and the absence of any duty to aid requirement in the majority of other states reflect the prevailing view that our laws should not regulate morality, and if they do, they should do so cautiously and sparingly.<sup>106</sup>

Supporters of this prevailing view insist that failing to come to the aid of another should not result in any liability, absent some relationship, contractual duty, or other obligation.<sup>107</sup> Even though good moral behavior might dictate otherwise, such as where the Florida teenagers could have easily contacted emergency personnel to help save the drowning disabled man, the law should not impose on others that morality. Morality should come from within, not from the force of law.<sup>108</sup>

This distinction between what might be morally right and what should be a legal obligation is rooted in precedent dating back over a century.<sup>109</sup> One early judicial

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Chief announced that he will be working with the County Sheriff and other law enforcement leaders on “efforts to push for [a] new state law focusing on ‘not rendering aid’ to someone in distress.”).

<sup>104</sup> See discussion *supra* Section I.A.

<sup>105</sup> Obviously, this result is peculiar because the teenagers' conduct was just as, if not more than, morally reprehensible as the online spectators to the sexual assault, as the teenagers' aid might have prevented the man's death altogether.

<sup>106</sup> McCall C. Carter, *Morality, Law and the Duty to Act: Creating a Common Law Duty to Act Modeled After the Responsibility to Protect Doctrine*, 2 WASH. U. JURIS. REV. 138, 150 (2010).

<sup>107</sup> For example, duties brought about by contract or special relationships, such as parent to child, employer to employee, and host to social guest, are acceptable. Jessica R. Givelber, *Imposing Duties on Witnesses to Child Sexual Abuse: A Futile Response to Bystander Indifference*, 67 FORDHAM L. REV. 3169, 3179 (1999).

<sup>108</sup> See Kathleen M. Ridolfi, *Law, Ethics, and the Good Samaritan: Should There Be a Duty to Rescue?*, 40 SANTA CLARA L. REV. 957, 960 (2000) (exploring the debate over morality and autonomy raised by Good Samaritan laws and explaining how punishing an omission amounts to the state “monitoring an individual's personal moral code.”). Scholars also are concerned that legislating morality “would destabilize written law by replacing it with the varied morals of those sitting on the bench.” Carl V. Nowlin, *Don't Just Stand There, Help Me!: Broadening the Effect of Minnesota's Good Samaritan Immunity Through Swenson v. Waseca Mutual Insurance Co.*, 30 WM. MITCHELL L. REV. 1001, 1004 (2004) (footnote omitted) (discussing Minnesota's civil immunity provision through an examination of the *Swenson* decision).

<sup>109</sup> See, e.g., *Depue v. Flateau*, 111 N.W. 1 (Minn. 1907).



decision by the Minnesota Supreme Court clearly delineated between good morals and legal obligations, stating:

Those duties which are dictated merely by good morals or by humane considerations are not within the domain of the law. Feelings of kindness and sympathy may move the Good Samaritan to minister to the sick and wounded at the roadside, but the law imposes no such obligation; and suffering humanity has no legal complaint against those who pass by on the other side.<sup>110</sup>

As such, the law should not impose moral duties on the “general public.”<sup>111</sup> An individual should owe a moral duty only when the person owes a duty to the victim “in an individual capacity”—that is, through a contractual or other relationship.<sup>112</sup> Accordingly, the law should excuse:

all failures to observe the obligations imposed by charity, gratitude, generosity, and the kindred virtues. The moral law would obligate an attempt to rescue a person in a perilous position—as a drowning child—but the law of the land does not require it, no matter how little personal risk it might involve, provided that the person who declines to act is not responsible for the peril.<sup>113</sup>

The principal argument that the law should not require others to act with “charity, gratitude, generosity, and the kindred virtues”<sup>114</sup> when another person is in obvious need of help is the preservation of personal autonomy.<sup>115</sup> In the United States, citizens value individual rights, including the freedom to pursue one’s own interests and the freedom of privacy, above a general responsibility to the community.<sup>116</sup> These rights are paramount to an individual’s freedom to move around, interact with others, and do as he or she pleases.<sup>117</sup> “[C]hoosing whether or not to perform a good deed is a personal

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<sup>110</sup> *Id.* at 2 (citing *Union Pac. Ry. Co. v. Cappier*, 72 P. 281 (Kan. 1903)) (explaining circumstances that might give rise to a duty to help a sick individual). This view still prevails today. For example, a more recent decision by the Arizona Court of Appeals explained how “there is no duty to rescue an endangered stranger.” *Miller v. Arnal Corp.*, 632 P.2d 987, 994 (Ariz. Ct. App. 1981) (finding no basis upon which to hold a ski resort liable for interfering with or preventing a rescue because it had no legal duty to aid the stranded hikers).

<sup>111</sup> *Union Pac. Ry. Co.*, 72 P. at 283 (holding that a railway company had no legal duty to aid a trespasser who was injured while on the company’s track despite the ability to do so).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* (first quoting BARROWS ON NEGLIGENCE 4; then citing *Kenney v. Hannibal & St. Joseph R.R.*, 70 Mo. 252, 252–57 (Mo. 1879)).

<sup>114</sup> *Id.*

<sup>115</sup> Alison M. Arcuri, Comment, *Sherrice Iverson Act: Duty to Report Child Abuse and Neglect*, 20 PACE L. REV. 471, 476 (2000) (“In a democratic society, the basic and most obvious argument against forcing people to help others is that such a law will interfere with an individual’s freedom and privacy.” (footnote omitted)).

<sup>116</sup> See Ridolfi, *supra* note 108, at 960–61.

<sup>117</sup> See Philip W. Romohr, *A Right/Duty Perspective on the Legal and Philosophical Foundations of the No-Duty-to-Rescue Rule*, 55 DUKE L.J. 1025, 1042 (2006).

decision, a private matter for an individual and [his or] her conscience . . . .”<sup>118</sup> Thus, a rule that would require individuals to put others’ interests above their own would seriously undermine the principle of personal autonomy.<sup>119</sup>

Opponents to duty to aid laws would argue that the personal autonomy principle should take precedent,<sup>120</sup> especially when such laws aim to punish nonfeasance, not misfeasance—the key to liability for negligent and criminal acts in United States law.<sup>121</sup> To hold a person liable for an act under United States law, that person must have had a duty to the victim and breached that duty through some overt or affirmative action.<sup>122</sup> An omission normally does not suffice for a finding of liability.<sup>123</sup> For that reason, punishing nonfeasance and misfeasance are different. In cases where a person does not act affirmatively, such as with nonfeasance, the law should respect that person’s personal autonomy rather than punish it.<sup>124</sup> That is, “when one merely allows harm to happen, instead of consciously causing it to happen, one’s personal autonomy should not be violated by the imposition of liability.”<sup>125</sup>

In addition to respecting personal autonomy, opponents to imposing liability for failing to act argue that imposing liability would be unfair to those who decide not to act for reasons other than a lack of good morals.<sup>126</sup> Individuals have very “specific, personal reasons to avoid attempting to rescue someone, and therefore it would be unfair to require it of the public at large.”<sup>127</sup> For example, a bystander might decide not to act because he or she is not certain as to the danger or is not totally aware of the pressing need for help, either because the bystander is distracted or the situation is ambiguous. Though the Florida teenagers’ recorded comments suggest otherwise, this could have been true for the drowning disabled man, where initially the bystanders might have been uncertain or confused as to whether the man was joking, splashing

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<sup>118</sup> Ridolfi, *supra* note 108, at 961 (“[T]o invade [the] sphere [of one’s conscience] is a threat to individual autonomy.”).

<sup>119</sup> Jay Logan Rogers, *Testing the Waters for an Arizona Duty-to-Rescue Law*, 56 ARIZ. L. REV. 897, 904–05 (2014) (explaining how duty to rescue statutes “would undermine key values and ideals of our society, including personal autonomy.”).

<sup>120</sup> Ridolfi, *supra* note 108, at 960–61.

<sup>121</sup> See Marcia M. Ziegler, Comment, *Nonfeasance and the Duty to Assist: The American Seinfeld Syndrome*, 104 DICK. L. REV. 525, 536–37 (2000) (advocating for a reasonableness analysis in duty to assist cases to determine civil liability in cases of nonfeasance and acknowledging “that there is a grave distinction between causing harm and failing to prevent harm.” (footnote omitted)).

<sup>122</sup> See *Union Pac. Ry. Co. v. Cappier*, 72 P. 281, 283 (Kan. 1903) (holding that a railway company had no legal duty to aid a trespasser who was injured while on the company’s track despite ability to do so); Ziegler, *supra* note 121, at 533.

<sup>123</sup> See, e.g., FLA. STAT. § 768.13 (2017); 745 ILL. COMP. STAT. 49/1 *et seq.* (2018).

<sup>124</sup> Ziegler, *supra* note 121, at 536–37.

<sup>125</sup> *Id.*

<sup>126</sup> See Thomas G. Amason, *The Sherrice Iverson Act: Creating a Duty to Report the Sexual Abuse of Children*, 23 LAW & PSYCHOL. REV. 153, 160 (1999) (explaining reasons why people do not or are unwilling to report crimes).

<sup>127</sup> Rogers, *supra* note 119, at 905.

around, or truly struggling to stay afloat. This ambiguity weighs against imposing liability.

Additionally, a bystander might find difficulty in assessing how to rescue or give aid to the victim. Some people have a “genetic or psychological predisposition to ‘freeze up’ in an emergency.”<sup>128</sup> When a situation has more than one bystander, deciding whether and how to act may become even more difficult, as multiple potential rescuers usually result in a diffusion of responsibility and confusion over who will take the lead in calling for aid or beginning the rescue.<sup>129</sup> Finally, it would be unfair to require action from a person who might be afraid to help or reluctant to contact authorities out of a mistrust of law enforcement or other fear, such as revealing an illegal immigration status.<sup>130</sup>

Opponents to imposing liability for failing to act also express concerns about worsening the emergency and exposing the bystanders themselves to physical harm or other danger.<sup>131</sup> In other words, duty to aid laws might encourage bystanders to give aid when they are ill-equipped to do so, potentially increasing the risk not only to themselves but also to the victims.<sup>132</sup> Likewise, bystanders might take unnecessary or foolish risks, which also is counterproductive.<sup>133</sup> While medical and other emergency personnel are trained to handle emergency situations, the average person is not. Therefore, “rescue efforts may go awry and place the victims in greater peril, [and] they may also turn out badly for the rescuers themselves, causing them harm.”<sup>134</sup>

Moreover, a frequent critique of duty to aid laws is the problem of enforcement.<sup>135</sup> Detecting violations of the laws would be difficult and, in many cases, impossible. For instance, a bystander who chooses not to rescue is unlikely to report his or own refusal to help someone in danger. “[A] third party may be reluctant to report someone else’s failure” because doing so might expose that person to similar liability<sup>136</sup> or result in the unpleasant stigma of snitching.<sup>137</sup> Consequently, “the often undetectable nature of possible defendants diminishes . . . the practical effect of an affirmative duty-to-rescue rule.”<sup>138</sup>

<sup>128</sup> *Id.* (citing Scordato, *supra* note 81, at 1484–84).

<sup>129</sup> *Id.* at 908.

<sup>130</sup> *Id.* at 922–23 (discussing how one possible consequence of a duty to aid law is the reporting of and identifying the illegal status of an individual but concluding that, in cases of dangerous harm, that consequence is preferred over death or serious injury).

<sup>131</sup> Scordato, *supra* note 81, at 1476.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 1476–77.

<sup>134</sup> *Id.* at 1476 (footnote omitted).

<sup>135</sup> Rogers, *supra* note 119, at 910 (citing Hyman, *supra* note 15, at 656).

<sup>136</sup> *Id.* at 911.

<sup>137</sup> Maura Dolan, ‘Good Samaritan’ Laws Are Hard to Enact, Experts Say, L.A. TIMES (Sept. 9, 1998), <http://articles.latimes.com/1998/sep/09/news/mn-20995> (explaining one concern with a duty to report is “that we don’t want, as a matter of law, to turn into informants on each [other] . . . .” (quoting Arthur Leavens, a professor at Western New England College School of Law)).

<sup>138</sup> Scordato, *supra* note 81, at 1454, 1468 (arguing “that a general duty to affirmatively aid in tort law would generate far more costs than it would provide corresponding benefits.”).

Similarly, investigating, arresting, and adjudicating violators comes with a cost, and that cost is higher when the evidence is lacking or circumstantial.<sup>139</sup> Depending on the wording of the law, police would need to show that the violator knew almost certainly that a crime was occurring or danger of physical harm was present.<sup>140</sup> Indeed, it is likely that only the most egregious violations would be brought to the attention of police. Therefore, because many violations might go undetected and unpunished, an intrinsic unfairness underlies how states would apply the laws.<sup>141</sup>

Lastly, opponents argue that the instances of bystanders failing to act are too infrequent to warrant creating laws imposing liability.<sup>142</sup> “Bad Samaritanism,” as some refer to it,<sup>143</sup> is “extraordinarily rare.”<sup>144</sup> The extremely low number of prosecutions under bad Samaritan laws in the few states that have them proves that failure to act situations are quite uncommon.<sup>145</sup> Accordingly, the bystanders’ omissions in both the Chicago and Florida cases are not the norm. Given this reality, duty to act laws likely would not have had any effect on the online spectators’ or teenagers’ behavior in those cases:

[N]ot all persons who would choose not to reasonably aid another in the absence of a coercive legal rule would necessarily respond by engaging in the socially desired behavior when faced with the threat of tort law liability. After all, much more severe consequences now exist for those found guilty of homicide, armed robbery, and other serious crimes, and yet people continue to commit those crimes.<sup>146</sup>

Given the infrequency of egregious failures to act and the questionable effect any law would have on changing behavior in those situations, efforts to establish duty to aid laws might be futile.

### III. PUBLIC POLICY CONSIDERATIONS DEMAND LAWS IMPOSING A DUTY TO AID

The idea that states should make an individual come to the aid of another, even in the absence of a relationship or other contractual obligation, is not new, nor is the idea unsupported by legal precedent. Indeed, one legal scholar dating back to the early 1900s advocated for such a change in the law:

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<sup>139</sup> Arcuri, *supra* note 115, at 478 (asserting that there is an “inherent difficulty in ascertaining who, if anyone, violated [these] types of law[s].”).

<sup>140</sup> Dolan, *supra* note 137.

<sup>141</sup> Arcuri, *supra* note 115, at 480–81; *see also* Amason, *supra* note 126, at 165 (explaining how “selective enforcement” may raise discrimination claims as well).

<sup>142</sup> Hyman, *supra* note 15, at 656.

<sup>143</sup> *See, e.g.,* Jennifer Bagby, *Justifications for State Bystander Intervention Statutes: Why Crime Witnesses Should Be Required to Call for Help*, 33 IND. L. REV. 571, 578–79 (2000).

<sup>144</sup> Hyman, *supra* note 15, at 656 (providing the first empirical study of the no-duty rule in action and finding that proven cases of non-rescues are “extraordinarily rare” and, on the flip side, proven cases of rescues are “exceedingly common”).

<sup>145</sup> *Id.*

<sup>146</sup> Scordato, *supra* note 81, at 1467–68 (footnote omitted).

As the law stands today there would be no legal liability, either civilly or criminally, in [failure to act] cases. The law does not compel active benevolence between man and man. It is left to one's conscience whether he shall be the good Samaritan or not.

But ought the law to remain in this condition? Of course any statutory duty to be benevolent would have to be exceptional. The practical difficulty in such legislation would be in drawing the line. But that difficulty has continually to be faced in the law. We should all be better satisfied if the man who refuses to throw a rope to a drowning man or to save a helpless child on the railroad track could be punished . . . .<sup>147</sup>

The inability to punish those who fail to throw a rope to a drowning man or save a helpless child on the railroad track creates a "void in the law."<sup>148</sup> The results can be disturbing, as are the cases with the online spectators of the sexual assault of the minor in Chicago and teenage witnesses to the drowning death of the disabled man in Florida, all of whom faced no penalties whatsoever for their unsympathetic inaction. Thus, this void makes deterring the callousness and selfishness of individuals impossible.<sup>149</sup> In other words, no legal deterrent exists for those who stand by and do nothing while others suffer. This counters an important moral principle in United States law: the respect for and preservation of human life.<sup>150</sup>

While opponents might be reluctant to legislate morality or restrict an individual's personal autonomy, existing laws already do just that. For example, society believes taking the life of another is morally wrong, and therefore the law punishes doing so in the harshest of ways.<sup>151</sup> Society also believes taking the property of another is wrong; therefore, the law criminalizes theft and other property offenses.<sup>152</sup> Society further believes that children and the mentally disabled, for example, are some of the most vulnerable members of the community; consequently, the legislature has enacted special laws to protect them.<sup>153</sup> These laws exist to prevent harm and, in doing so, they naturally regulate personal freedoms:

The law regulates personal freedom by imposing duties and extending liberties. The law also confers rights against one's fellow citizens; it protects citizens by prohibiting one from exercising their personal liberties

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<sup>147</sup> James Barr Ames, *Law and Morals*, 22 HARV. L. REV. 97, 112–13 (1908) (positing a simple "working rule" that would obligate Good Samaritans to help even if they are not responsible in any way for the perilous situation).

<sup>148</sup> Amason, *supra* note 126, at 156 (internal quotation marks omitted) (quoting Dolan, *supra* note 137).

<sup>149</sup> Bagby, *supra* note 143, at 583 (arguing that a duty to rescue statute would serve to "deter antisocial behavior").

<sup>150</sup> *Id.* (citing JOEL FEINBERG, HARM TO OTHERS 175 (1984)).

<sup>151</sup> *See, e.g.*, 18 U.S.C. § 1111 (2017).

<sup>152</sup> *See, e.g.*, 18 U.S.C. § 641 (2017).

<sup>153</sup> *See* Child Abuse Prevention and Treatment and Adoption Reform, 42 U.S.C. §§ 5101–08 (2017); Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (2009).

to the detriment of others. While a presumption in favor of liberty exists, certain societal interests justify limiting personal liberty.<sup>154</sup>

Thus, a duty to aid statute would not be unique in reflecting societal morals and values nor in restricting personal autonomy. Given the immorality in watching another die or suffer serious physical harm, laws should encourage the right moral response.<sup>155</sup> This would be a natural extension of “the life-affirming values that our criminal laws . . . represent: community togetherness, and recognition and appreciation of our common humanity.”<sup>156</sup> These values are just as important as preserving personal autonomy. A duty to aid statute can easily balance these principles by requiring bystanders to help only when they can and punishing those who willfully choose to do nothing or instead objectify or exploit the victim.

Such a statute would not only promote good morals, but also would help change social norms and societal expectations for intervention.<sup>157</sup> A duty to aid statute would “legally codify the notion that people have a civic responsibility to look out for one another.”<sup>158</sup> Consequently, bystanders would feel an increased personal responsibility to act, helping to counter the problems of bystander apathy and diffusion of responsibility that often arise when many bystanders are present.<sup>159</sup>

Moreover, in cases of bad Samaritanism, the failure to act is an act of misfeasance, not nonfeasance, as opponents suggest.<sup>160</sup> A bystander who witnesses a crime or accident and fails to use his or her power to intervene has affected the result on the victim of that crime or accident. As one author explains:

A bystander who witnesses a crime upon a victim has the power to affect the situation and the crime in progress by notifying the authorities or directly assisting the victim. If the bystander does nothing, the resulting

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<sup>154</sup> Bagby, *supra* note 143, at 581 (citing FEINBERG, *supra* note 150, at 8, 10).

<sup>155</sup> Rogers, *supra* note 119, at 903 (proposing Arizona enact a criminal statute that imposes a fine on witnesses to crimes who fail to call for help or attempt to rescue the victim and arguing that such a law would be “more harmonious with basic principles of morality and justice.” (footnote omitted)).

<sup>156</sup> Ken Levy, *Killing, Letting Die, and the Case for Mildly Punishing Bad Samaritanism*, 44 GA. L. REV. 607, 628 (2010) (footnote omitted) (failing to act is “so morally wrong that the state should severely punish it.”).

<sup>157</sup> Jay Silver, *The Duty to Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 429 (1985) (rebutting many arguments against a duty to rescue statute). The “law not only reflects society’s moral values, but also helps shape them.” *Id.* “Accordingly, a legal duty to rescue would increase the number of persons who feel morally compelled to offer emergency aid.” *Id.*; see Bagby, *supra* note 143, at 583 (“One reason people do not render assistance is that they perceive no societal expectation to do so. Bystanders are acting in accordance with the social norm of no intervention.”).

<sup>158</sup> Rogers, *supra* note 119, at 903.

<sup>159</sup> Bagby, *supra* note 143, at 585–86 (explaining how the duty would normalize responsibility of bystanders).

<sup>160</sup> In any event, laws do punish pure acts of omission. Failure to file one’s tax return is just one example. See Silver, *supra* note 157, at 430 (arguing that “despite dicta to the contrary, omissions have long served as a basis for liability in our system.”).

harm to the victim is a consequence of the bystander's decision not to use this power to intervene.

Not only is the harm that results to the victim connected to the bystander's failure to intervene, but the bystander's failure to intervene is also a "causally relevant factor" in the resulting harm to the victim. Failing to summon the authorities on behalf of the victim is not the sole cause for the resulting harm . . . [h]owever, [it] plays a relevant role in the harm that results.<sup>161</sup>

Consequently, the affirmative decision not to intervene is an act of misfeasance that should be punishable.

This misfeasance is even more apparent in a situation where the bystander has engaged in some way with the victim of the crime or danger, as the teenagers did with the drowning disabled man in Florida. There, the teenagers were, as one scholar describes, "engaged spectators"<sup>162</sup> because they mocked and taunted the man as they filmed his death. Engaged spectators are "those who choose to lock their attention on the scene . . ." <sup>163</sup> "Use of technology, such as taking a cell phone picture [or video recording], is one indication that the bystander" has become an engaged spectator, "directly engaging not only the scene of an accident or an assault, but also in some way the vulnerable person."<sup>164</sup>

In these cases, the bystander has taken steps "to objectify, humiliate and exploit a victim at his or her most vulnerable moment."<sup>165</sup> This is undoubtedly an affirmative, overt act. To be sure:

Those who decide to stop, focus and engage an emergency scene, and to use their cell phones to record images of a victim at the site of an assault or an accident, have a moral obligation to treat the victim with dignity, which includes neither objectifying nor exploiting their vulnerability.<sup>166</sup>

The law should translate that moral obligation into a legal one.

A civic justification supports such a law as well. Individuals should assist the criminal justice system by notifying the police with information about crimes.<sup>167</sup> "By requiring bystanders to notify the authorities, the criminal justice system is able to fulfill its role in aiding the victims of crime and stopping criminal acts."<sup>168</sup> A

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<sup>161</sup> Bagby, *supra* note 143, at 582 (quoting FEINBERG, *supra* note 150, at 174).

<sup>162</sup> Uelmen, *supra* note 15, at 92.

<sup>163</sup> *Id.* In contrast, "pure bystanders" are "bystanders who pass by or otherwise disengage from the scene of an assault or accident . . ." *Id.*

<sup>164</sup> *Id.* at 108.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* (footnote omitted).

<sup>167</sup> Bagby, *supra* note 143, at 579–81 (explaining social justifications for bystander intervention statutes). "Creation of [bystander intervention] statute[s] would give legal effect to an already existing shared principle that we should help those in distress." *Id.* at 580. The statutes would also "serve the civic duty of assisting law enforcement." *Id.* at 581.

<sup>168</sup> *Id.*

requirement likewise “will provide an incentive for citizens to help strangers in peril, thereby leading to the desirable public policy outcome of a greater number of endangered people being rescued.”<sup>169</sup> “[L]ives would be saved and injuries avoided.”<sup>170</sup> Therefore, a duty to aid statute has the practical effect of “minimiz[ing] needless deaths and injuries,” not increasing them.<sup>171</sup>

Additionally, even if bad Samaritan situations like the ones in Chicago and Florida rarely happen, a duty to aid law would make a clear “statement that [society] find[s] . . . inaction and indifference to a fellow human being to be morally despicable” and every citizen has “a strong affirmative moral duty to attempt easy rescues rather than turning a blind eye to people [they] happen to find in grave danger.”<sup>172</sup> This statement is imperative to addressing the impact that social media has had on a bystander’s ability and decision to give aid.

A well-drafted law with explicit obligations and reasonable exceptions can address the remaining objections to duty to aid statutes, including those relating to fairness, safety, and enforcement. The law would need to be a criminal one that requires notification to authorities and nothing more.<sup>173</sup> Though the statute could encourage bystanders to either report or rescue, rescue should be optional, not mandatory. The only duty would be to notify authorities when someone needs help.<sup>174</sup> Because of “the prevalence of cellular phones and the well-established and efficient emergency response services found throughout the [United States]” today, this requirement

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<sup>169</sup> Rogers, *supra* note 119, at 903 (first citing Levy, *supra* note 156, at 627; then citing Liam Murphy, *Beneficence, Law and Liberty: The Case of Required Rescue*, 89 GEO. L.J. 605 (2001)).

<sup>170</sup> Silver, *supra* note 157, at 428.

<sup>171</sup> Levy, *supra* note 156, at 627, 626–29 (explaining the utilitarian reasons for criminalizing bad Samaritanism). One utilitarian reason is “to provide society an outlet for its moral outrage” and allow people to “enjoy” a “sense of justice” when someone who acts with “inhumane indifference” is punished. *Id.* at 627–28 (arguing that the public would have taken satisfaction in punishing David Cash—a model of bad Samaritanism—for failing to intervene and prevent Sherrice Iverson’s brutal sexual assault and murder).

<sup>172</sup> *Id.* at 684 (footnote omitted).

<sup>173</sup> This Article does not explore whether there should be a civil counterpart to the criminal duty. See, e.g., Marc A. Franklin & Matthew Ploeger, *Of Rescue and Report: Should Tort Law Impose a Duty to Help Endangered Persons or Abused Children?*, 40 SANTA CLARA L. REV. 991 (2000) (arguing that there should be no civil duty of easy rescue).

<sup>174</sup> Bagby, *supra* note 143, at 587 (proposing that a duty to report crime statute would be “easily fulfilled”). “To fulfill the duty, the bystander [would] need only summon the authorities to the crime scene by dialing 911 or using an alternative method. No special skills, medical or otherwise, are required to notify the authorities.” *Id.* Accordingly, it would not require “the heroism of invulnerability and infantile omnipotence.” Daniel B. Yeager, *A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers*, 71 WASH. U. L.Q. 1, 8, 24–25 (1993) (criticizing “the common notion that affirmative duties are intolerable because they threaten autonomy.”).



should be easy to meet.<sup>175</sup> This obligation presents a minimal burden on the bystander but could be the “difference between life and death for the . . . victim.”<sup>176</sup>

Moreover, if the situation were unclear to the bystander, all he or she would need to do is contact authorities and report the possible crime or potential danger. The authorities would bear the ultimate responsibility of determining whether the situation involves an actual crime or real danger. Interestingly, knowing that a law would penalize them for failing to report might create an incentive for people to be more aware of their surroundings, ultimately leading to more, not less, aid to victims.<sup>177</sup>

Because reporting would be the only requirement, a bystander should not freeze up or be confused about what to do.<sup>178</sup> Society also should not be concerned that a bystander will undertake reckless or dangerous rescues. The more prevalent duty to aid statutes become, the more people will be educated on rescue and therefore will be able to give aid appropriately.<sup>179</sup> The reporting itself can be done anonymously to dispel any fears over the bystander’s privacy or personal well-being.

Exceptions for situations where reporting or rescuing would be dangerous or unnecessary would ensure that any duty to aid law was reasonable and fair. To that end, the law would not punish a bystander who does not report or give aid because doing so would expose the bystander to grave physical harm or other danger or because others are already providing reasonable assistance.<sup>180</sup> Because reporting is so simple and does not need to take place at the scene of the crime or emergency, imagining a situation where doing so would pose any risk to the bystander is difficult. Nonetheless, the law would include an exception for those who could not report safely.

For the law to have an impact on a bystander’s decision to intervene, the penalties for failing to act must be substantial, though obviously not oppressive:

If the penalty is set too low, the statute will only serve as a type of moral compass, and the law will likely go unenforced. If the penalty is set too high, the public is likely to recoil from the idea that failure to report a crime should be a criminal offense. Additionally, if the penalty is set too high, the enforcement agencies of the states could be deluged with calls reporting

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<sup>175</sup> Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U. L. REV. 77, 124–25, 138 (2005) (proposing a model penal statute imposing a duty to inform authorities or professional rescue personnel in emergencies).

<sup>176</sup> Arcuri, *supra* note 115, at 472 (supporting duty to report federal legislation in honor of Sherrice Iverson, a child victim of a brutal sexual assault and murder that a bystander, David Cash, had the ability to prevent, but did not).

<sup>177</sup> Rogers, *supra* note 119, at 913.

<sup>178</sup> Jack Wenik, *Forcing the Bystander to Get Involved: A Case for a Statute Requiring Witnesses to Report Crime*, 94 YALE L.J. 1787, 1800, 1803 (1985) (proposing a duty to report penal law but limiting it to witnesses to felonies who fail to report as to avoid “overbroad coverage” of such a law). A duty to aid statute would “combat[] indecision through its provision of an accepted course of action and its explicit determination that a decision to ignore crime is wrong and socially unacceptable.” *Id.* at 1803.

<sup>179</sup> Levy, *supra* note 156, at 685 (“[B]ad-Samaritan laws might actually reduce the number of . . . tragic rescue attempts by educating the public about when they should, and when they should *not*, attempt rescues.”).

<sup>180</sup> See generally Silver, *supra* note 157, at 442–43 (discussing these two proposed defenses to liability).

noncrimes because the population fears prosecution themselves. The penalty should reflect the idea that [the] statute is likely to be used when someone falls short of being considered an accessory . . . .<sup>181</sup>

A misdemeanor charge imposing a fine of up to \$2,500, imprisonment for up to one year, or both would suffice to achieve this result.<sup>182</sup> Importantly, “if someone had major ideological or psychological reasons for not engaging in a rescue attempt, the consequences of noncompliance with [the] law would not be debilitating for that person.”<sup>183</sup>

Moreover, prosecutors would have the discretion “to dismiss a technical duty-to-rescue violation in a case with significant mitigating factors.”<sup>184</sup> They also would have the discretion to bring “to bear [the statutes] against a defendant who has failed to affirmatively aid only in those situations in which the defendant’s failure to act warrants prosecution, such as if he has exhibited exceptional callousness or unquestionably reprehensible conduct.”<sup>185</sup> Prosecutors could seek the maximum penalties for “engaged spectators,” like those in the Chicago and Florida cases. “Similarly, prosecutors can choose to pursue only those cases that are most likely to send a positive message about reasonable rescue to the public at large without unduly aggravating its possible costs.”<sup>186</sup> Provided that the choice to pursue a case does not involve impermissible discrimination, this selectivity is not unfair or prohibited.<sup>187</sup> Rather, the selectivity is an efficient and appropriate use of law enforcement and judicial resources.

Enforcement, while not perfect, would be achievable as well. Law enforcement, as in any criminal matter, might learn through an investigation that someone was present and could have helped. Moreover, with social media, cell phones, and other technological devices, identifying witnesses who have failed to assist might not be as difficult as doing so would have been in the past.<sup>188</sup> In fact, social media documentary evidence helped identify the online spectators in Chicago and teenage witnesses in Florida.<sup>189</sup> Therefore, the difficulty of detection is not insurmountable, particularly when considering that this problem of detection is one that law enforcement tackles for all crimes. Thus, a duty to aid statute does not present a unique circumstance.

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<sup>181</sup> Amason, *supra* note 126, at 164 (footnotes omitted) (discussing drafting issues for duty to report statutes).

<sup>182</sup> Silver, *supra* note 157, at 438 (arguing that a similar proposed penalty is “not excessive, yet strong enough that the duty will be taken seriously”).

<sup>183</sup> Rogers, *supra* note 119, at 920 (footnote omitted).

<sup>184</sup> *Id.* at 907 (footnote omitted).

<sup>185</sup> Scordato, *supra* note 81, at 1497–98.

<sup>186</sup> *Id.* at 1498 (citing *Wayte v. United States*, 470 U.S. 598, 607 (1985)).

<sup>187</sup> Wenik, *supra* note 178, at 1805.

<sup>188</sup> Breanna Trombley, *Criminal Law—No Stitches for Snitches: The Need for a Duty-to-Report Law in Arkansas*, 34 U. ARK. LITTLE ROCK L. REV. 813, 828 (arguing for a duty to report statute in Arkansas and explaining how the number of witnesses present and cell phones used to capture parts of an attack on a high school student increases the likelihood that law enforcement can identify bystanders).

<sup>189</sup> Chokshi, *supra* note 6.

Finally, even if the instances of Bad Samaritanism are low and the number of reported cases under existing statutes is almost zero, the symbolic message that such statutes could send to the community is significant. The message would be clear: individuals must pay attention to, connect with, and, importantly, respect others in need of help. The hope is that this message would change the culture of apathy, disengagement, and victim objectification in important ways:

As our society has become more mobile, individuals have tended to lose their community identity and their dependence upon other community members. . . . As the bonds among community members weaken, so must the social pressure and individual desire to assist members in distress. A legal duty to rescue would, in part, replace the waning social duty.<sup>190</sup>

Thus, a duty to aid statute would serve to repair broken ties within the community and reestablish relationships with others by expressly stating a duty to report or rescue and by condemning those who remain passive in emergencies.

#### IV. CONCLUSION

Social media dominates personal relationships and interactions with others and the community. Unsurprisingly, this dominance has influenced bystander behavior, leading to an increase in apathy when observing crimes online or witnessing tragedies firsthand. Therefore, Good Samaritan laws must send a message to the community that bystander apathy is no longer acceptable. Bystanders must choose to report or help, not watch and livestream; otherwise, they will face penalties. By creating a duty to assist, the hope is to adjust for the influence of social media and positively change bystander behavior, ideally motivating those like the online spectators in the Chicago case and the teenage boys in the Florida case to call authorities and seek help when possible.

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<sup>190</sup> Silver, *supra* note 157, at 434.