

DUTY TO RESCUE IN THE DIGITAL AGE: A COMPARATIVE
ANALYSIS

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I. INTRODUCTION

In 2018, a group of teenagers in Florida decided to callously videotape and mock Jamel Dunn, a thirty-one-year-old man with disabilities, as he drowned to his death.¹ Instead of assisting the drowning man, the teenagers recorded his tragic plight, laughing and jokingly telling Dunn he was going to die.² While the public was outraged by the teenagers' failure to act, their actions were not punishable by law.

Throughout the COVID-19 pandemic, social media has been significantly relied upon for people to feel interconnected and to demand social change. For instance, in early May of 2020, a video surfaced of Ahmaud Arbery, a young Black man who was shot down while on a run in broad day light in Georgia.³ The video captured the devastating final moments of Arbery's life and was met by demands for justice.⁴ Nearly three weeks later, a video surfaced of Amy Cooper, a white woman, calling the police on a Black man in Central Park, saying, "I'm going to tell them there's an African American man threatening my life."⁵ This footage also sparked public outrage and added to the conversation about race relations in the United States.⁶ Soon after the

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¹ See Bopha Phorn, *Teens Who Mocked, Filmed and Failed to Help Drowning Florida Man Won't Face Charges*, ABC NEWS (June 25, 2018, 5:27 PM), <https://abcnews.go.com/US/teens-mocked-filmed-failed-drowning-florida-man-face/story?id=56142196> [<https://perma.cc/QAD7-KEVF>].

² *Id.*

³ *Video Appears to Show Fatal Shooting of Ahmaud Arbery*, WASH. POST (May 11, 2020, 5:21 PM), https://www.washingtonpost.com/video/national/video-appears-to-show-fatal-shooting-of-ahmaud-arbery/2020/05/11/346cb94e-c0e5-418e-b30b-34b52cddb62d_video.html [<https://perma.cc/489W-MRVP>].

⁴ Eugene Scott, *There's Anger About Ahmaud Arbery's Shooting Across the Political Spectrum*, WASH. POST (May 8, 2020), <https://www.washingtonpost.com/politics/2020/05/07/why-outrage-about-amaud-arberys-shooting-came-all-corners-political-spectrum-quickly/> [<https://perma.cc/A4ZJ-XEPM>].

⁵ Amir Vera & Laura Ly, *White Woman Who Called Police on a Black Man Bird-Watching in Central Park Has Been Fired*, CNN (May 26, 2020), <https://www.cnn.com/2020/05/26/us/central-park-video-dog-video-african-american-trnd/index.html> [<https://perma.cc/C37K-LG7J>].

⁶ Maria Sacchetti, Shayna Jacobs & Abigail Hauslohner, *Police Outrage, Legislation Follow Calls to Police About Black People*, WASH. POST, (May 27, 2020), https://www.washingtonpost.com/national/public-outrage-legislation-follow-white-womans-call-to-police-about-black-man-in-central-park/2020/05/27/94b219a6-a049-11ea-9590-1858a893bd59_story.html [<https://perma.cc/8D3T-7RP5>].

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Cooper event, George Floyd's murder was captured on video and released to the public;⁷ it was as if there was a seismic shift that reverberated across the globe.⁸ People across the country took to the streets throughout the summer of 2020, protesting and demanding systemic change.⁹

In the months following George Floyd's murder, it became abundantly clear the power that social media can have. Social media has become so pervasive in our society that there has been an increasing reliance on it not only as a way to gather news but also as a mechanism to demand legislative action.¹⁰ In the wake of George Floyd's murder, for instance, "at least 30 states and Washington, DC, enacted one or more statewide legislative policing reforms, ensuring greater policy uniformity within each jurisdiction."¹¹ Additionally, some states "created a duty for law enforcement officers to intervene in cases of excessive or illegal force or misconduct, with penalties for officers who fail to do so ranging from discretionary decertification to criminal liability."¹² This movement signaled that the country "may be on the precipice of positive change."¹³

While social media was an effective tool to demand legislative change in the wake of George Floyd's murder, it was insufficient to effectuate change in other tragic incidents that warranted reform. For example, after Jamel Dunn's drowning, Florida Senator Debbie Mayfield introduced a bill that would have made it a misdemeanor to fail

⁷ Amir Vera & Daniel Wolfe, *Seeking Justice: A Timeline Since the Death of George Floyd*, CNN (2021), <https://www.cnn.com/interactive/2021/03/us/george-floyd-case-timeline/> [<https://perma.cc/CU8W-Y4ZP>].

⁸ See Evan Hill, Ainaro Tiefert, . . . ler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES, <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [<https://perma.cc/UHA5-FFBE>] (Jan. 24, 2022).

⁹ Audra D.S. Burch, Amy Harmon, Sabrina Tavernise & Emily Badger, *The Death of George Floyd Reignited a Movement. What Happens Now?*, N.Y. TIMES, <https://www.nytimes.com/2021/04/20/us/george-floyd-protests-police-reform.html> [<https://perma.cc/V8BM-D2ML>] (Oct. 5, 2021).

¹⁰ Maneesh Arora, Davin L. Phoenix & Archie Delshad, *Framing Police and Protestors: Assessing Volume and Framing of News Coverage Post-Ferguson, and Corresponding Impacts on Legislative Activity*, 7 POL., GRPS., & IDENTITIES 151, 152–53 (2019).

¹¹ RAM SUBRAMANIAN & LEILY ARZY, BRENNAN CTR. FOR JUST., STATE POLICING REFORMS SINCE GEORGE FLOYD'S MURDER (2021), <https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder> [<https://perma.cc/EWH6-ADXJ>].

¹² *Id.*

¹³ *Id.*

to provide reasonable assistance to an endangered person.¹⁴ Despite the public outcry to hold the teenagers responsible for their callous behavior regarding Dunn's drowning,¹⁵ the bill failed to pass the Criminal Justice Subcommittee.¹⁶ Similarly, there was an online movement to enact a dut-to-report statute in Colorado after the drowning of outdoorsman Eric Ashby.¹⁷ Under the proposed Colorado law, failure to call 911 in a life-threatening situation would have resulted in eighteen months in jail or a \$5,000 fine.¹⁸ Even though the Colorado petition garnered about 60,000 signatures online,¹⁹ the Colorado House Judiciary Committee voted 0-11 against the bill.²⁰

Among the majority of states that lack a duty-to-rescue statute,²¹ the law essentially condones the callous behavior of bystanders who fail to assist. This Note argues for the enactment of new state legislation regarding the duty-to-rescue doctrine which can vindicate

¹⁴ Lorelei Laird, *Proposed Florida Law Resurrects the Debate Around the Legal Duty to Help Someone in Distress*, ABA J. (June 1, 2018, 1:50 AM), https://www.abajournal.com/magazine/article/florida_bad_samaritan_law [<https://perma.cc/E9ES-B7WU>].

¹⁵ *Id.*

¹⁶ H.R. 345, 2018 Leg., Reg. Sess. (Fla. 2018).

¹⁷ Eric Ashby was on an excursion with four companions in the Arkansas River when he was swept away by the rapids and drowned. While the companions saw Ashby cling to a rock, no one helped him or bothered to call for emergency help. It was not until ten days later that Ashby's companions reported that he went missing. Paul Ashby, the decedent's father, said in a statement, "Because [the four bystanders] walked away, my son sat on the bottom of a river for 28 days. Because they walked away, I'll never have closure." Paul Ashby pressed for the passage of Eric's Law to require bystanders at the scene of an emergency to call 911. Sam Brasch, *Should There Be a Legal Duty to Call 911? 'Eric's Law' Makes a Case for Action*, COLO. PUB. RADIO NEWS (Feb. 8, 2018, 11:50 PM), <https://www.cpr.org/2018/02/08/should-there-be-a-legal-duty-to-call-911-erics-law-makes-a-case-for-action/> [<https://perma.cc/TPV6-ZMQE>]; see also Misty Morris, *Support Eric's Law, A Law That Requires People to Report Life Threatening Situations*, CHANGE.ORG, <https://www.change.org/p/support-eric-s-law-a-law-that-requires-people-to-report-life-threatening-situations> [<https://perma.cc/AZ9D-PR8B>] (last visited May 23, 2022).

¹⁸ Brasch, *supra* note 17.

¹⁹ Morris, *supra* note 17.

²⁰ Brasch, *supra* note 17.

²¹ Patricia Grande Montana, *Watch or Report? Livestream or Help? Good Samaritan Laws Revisited: The Need to Create a Duty to Report*, 66 CLEV. ST. L. REV. 533, 535 (2018) (citing Jen Fifield, *Why It's Hard to Punish 'Bad Samaritans'*, PEW CHARITABLE TR. (Sept. 19, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/2017/09/19/why-its-hard-to-punish-bad-samaritans>).

victims' suffering by holding offenders responsible.²² The absence of a duty-to-rescue law results in disturbing and heartbreaking outcomes for victims' families who grieve the loss of their loved ones who could have potentially been rescued or assisted. Duty-to-rescue statutes fill the void between people's expectations of what the law should be and what the law requires.²³

State legislators should not wait for another tragic accident to consider implementing duty-to-rescue statutes.²⁴ In the digital age, people are interconnected in ways that no longer make us apathetic strangers to one another.²⁵ As the father of the late Eric Ashby said, "What's important is that we all see we have responsibility for each other."²⁶

II. BACKGROUND

Under American common law, there is no general duty to rescue,²⁷ but there are four exceptions under which such a duty is imposed. First, a duty to rescue will be imposed when a statute establishes such a duty.²⁸ Second, a duty exists when someone holds a special status, such as a parent to a minor child, a relationship between spouses, the status of master to an apprentice, and the status of common carriers.²⁹ Third, a duty may be imposed pursuant to a contractual duty.³⁰ Fourth, a duty will be imposed when care is voluntarily

²² See I. Bennett Capers, John C.P. Goldberg & Benjamin C. Zipursky, *How to Reform Police Liability Without Involving McConnell or Trump*, WASH. POST (Aug. 17, 2020), <https://www.washingtonpost.com/opinions/2020/08/17/how-reform-police-liability-without-involving-mcconnell-or-trump/> [https://perma.cc/V56V-XZ37].

²³ Montana, *supra* note 21, at 552 (citing Thomas G. Amason, Article, *The Sherice Iverson Act: Creating a Duty to Report the Sexual Abuse of Children*, 23 L. & PSYCH. REV. 153, 156 (1999)).

²⁴ This Note uses the phrase "duty to rescue" to include a duty to assist and argues that this duty can be satisfied by rendering reasonable aid, which may include calling 911.

²⁵ See *infra* Part II.

²⁶ Brasch, *supra* note 17.

²⁷ See *Jones v. United States*, 308 F.2d 307, 310 (D.C. Cir. 1962).

²⁸ *Id.* For example, "hit and run" statutes require drivers involved in a car accident to help those injured in the accident, regardless of fault. See Jay Silver, *The Duty to Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 425 (1985).

²⁹ *Jones*, 308 F.2d at 310 (citing Annotation, 10 A.L.R. 1137 (1921); *Territory v. Manton*, 19 P. 387 (Mont. 1888); *R v. Smith* [1837] 8 C. & P. 153 (Eng.); *United States v. Knowles*, 26 F. Cas. 800 (N.D. Cal. July 11, 1864)).

³⁰ *Id.* (citing *R v. Smith* [1837] 8 C. & P. 153; *R v. Jones* [1901] 19 Cox C.C. 678 (Can.); *People v. Montecino*, 152 P.2d 5 (Cal. Ct. App. 1944)).

assumed in a way that secludes a person from the help of others and thus puts the person in peril.³¹ Where it is imposed, the duty to rescue is limited to what is “reasonable”; hence, the rescuer need not substantially endanger themselves while rendering aid.³² The Model Penal Code, a set of criminal law principles designed to guide state legislatures, also adheres to the general rule that there is no duty to rescue unless a statute imposes one.³³

In American legal scholarship, there has been a long debate about the duty-to-rescue doctrine. While the exceptions to the duty to rescue are expansive, more can be done in the American legal doctrine so that the duty is always imposed on everyone.³⁴ This Note will consider arguments for and against reforming the duty-to-rescue doctrine. While “[a]ll states, including the District of Columbia, currently have some form of a Good Samaritan statute,”³⁵ this Note urges states to revisit Good Samaritan statutes and implement a duty-to-rescue statute. “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.”³⁶ Notably, Good Samaritan statutes do not require bystanders to render aid; they apply “only *after* a bystander elects to give aid and does so in good faith. In sum, [Good Samaritan] statutes essentially protect bystanders who help, but generally do not mandate they must help.”³⁷ This Note urges states to go beyond Good Samaritan statutes and to require bystanders to help an individual in grave physical danger. Specifically, states should pass duty-to-rescue statutes that require bystanders to give reasonable aid when at the scene of an emergency, which may be satisfied by calling 911.³⁸

³¹ *Id.* (citing *R v. Nicholls* [1874] 13 Cox C.C. 75; *R v. Jones*, 19 Cox C.C. 678; *R v. Gibbins and Proctor* [1918] 13 Cr. App. 134 (Eng.); *State v. Noakes*, 40 A. 249 (Vt. 1897)).

³² RESTATEMENT (SECOND) OF TORTS ch. 12, topic 7, scope note (AM. L. INST. 1965).

³³ MODEL PENAL CODE § 2.01(3) (AM. L. INST. 2007).

³⁴ See Ken M. Levy, *Killing, Letting Die, and the Case for Mildly Punishing Bad Samaritanism*, 44 GA. L. REV. 607, 611 (2010).

³⁵ Montana, *supra* note 21, at 537 (citing D.C. CODE § 7-401 (2017); David A. Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEX. L. REV. 653, 679 (2006)).

³⁶ *Id.*

³⁷ *Id.* at 540 (citing PLAINTIFF’S PROOF PRIMA FACIE CASE § 13:4 (West 2017) (emphasis added)).

³⁸ For example, modern duty-to-rescue statutes such as Minnesota’s and Rhode Island’s are titled “Duty to Assist.” See MINN. STAT. § 604A.01(1) (2022); 11 R.I. GEN. LAWS § 11-56-1 (2022).

Part II of this Note will discuss society's increasing reliance on social media and technology and how this impacts the bystander effect. If people are generally willing to assist someone in need, the arguments that imposing a duty-to-rescue amounts to an obstruction of individual liberty lacks support. This is especially true when a duty-to-rescue statute provides that calling 911 may satisfy the duty. Part III will discuss the common law approach to the no-duty-to-rescue doctrine and criticize the arbitrary distinction of when a duty is imposed in reference to the special relationship exception. Part IV will discuss Germany's and France's Good Samaritan laws, and then focus on American states that have implemented duty-to-rescue statutes. Part IV will conclude with a discussion surrounding the debate of whether states should implement duty-to-rescue laws. After examining the international and domestic approaches, Part V will offer a new approach for what U.S. states should do. Specifically, states should pass duty-to-rescue laws that would require anyone, regardless of a special relationship—or a lack thereof—to provide reasonable aid, which may include calling 911 in an emergency. Finally, Part VI will conclude and provide a perspective on such changes.

A. Has Society Become Apathetic or Desensitized to Violence and Suffering?: A Closer Look at the Bystander Effect

During the early morning hours of a night in August of 2020, three transgender women were verbally and physically attacked in Hollywood, California.³⁹ The assailants livestreamed the attack and mocked the women as they called for help and begged for their personal items to be returned.⁴⁰ In the footage, bystanders also can be heard mocking the women and ignoring their requests to call 911.⁴¹ “[T]o see this level of violence celebrated gleefully, so much so that the perpetrator himself posted on social media,” said Los Angeles City Councilman Mitch O’Farrell, “is like a sucker punch to all of us who believe in civilized behavior.”⁴²

³⁹ See Jaclyn Peiser, *L.A. Officials Blast ‘Callous’ Bystanders Who Filmed Attack on Trans YouTube Star and Her Friends*, WASH. POST. (Aug. 21, 2020), <https://www.washingtonpost.com/nation/2020/08/21/eden-doll-hate-crime-la/> [https://perma.cc/H2UT-574C].

⁴⁰ Tikhot, *Eden Jaslene Joslyn Full Video*, YOUTUBE (Aug. 17, 2020), <https://www.youtube.com/watch?v=CWAUAqB9N4U> [https://perma.cc/V89S-STVH].

⁴¹ *Id.*

⁴² Peiser, *supra* note 39.

This case of bystander indifference is all too familiar to the American public. The bystander effect occurs when the presence of other people discourages an individual to aid someone in peril.⁴³ Studies of the bystander effect first occurred in 1964 following the infamous story of Kitty Genovese, a New York woman who was murdered right outside her apartment building.⁴⁴ Scientists across the globe continue to study the bystander effect, with new research frequently being published on the topic.⁴⁵

There are legitimate explanations for why onlookers may fail to act, notwithstanding some moral obligation to assist. “In the case of witnesses to crimes, danger—real or imagined—and fear of retaliation account for some failures to intervene or notify authorities.”⁴⁶ Additionally, bystanders may feel “frozen” and decide not to intervene because of the lack of opportunity to plan and the perceived difficulty of “quickly selecting the appropriate type of intervention.”⁴⁷ Lastly, the presence of other bystanders may have the effect of reducing “each potential rescuer’s individual sense of responsibility to the imperiled, and increase the probability of free-riding.”⁴⁸ Even though these are legitimate reasons to not intervene, the need to implement a duty-to-rescue rule that can be satisfied by calling 911 is important because it can mitigate harm and potentially save lives.

⁴³ See Nicholas Lemann, *A Call for Help: What the Kitty Genovese Story Really Means*, *NEW YORKER* (Mar. 2, 2014), <https://www.newyorker.com/magazine/2014/03/10/a-call-for-help> [<https://perma.cc/7BNA-G2F3>] (recounting the details of Kitty Genovese’s murder and underscoring the inaccuracies of the original reportage).

⁴⁴ See Harold Takooshian, *The 1964 Kitty Genovese Tragedy: What Have We Learned?*, *PSYCH. TODAY* (Mar. 24, 2014), <https://www.psychologytoday.com/us/blog/not-just-bystander/201403/the-1964-kitty-genovese-tragedy-what-have-we-learned> [<https://perma.cc/P3CC-96JJ>].

⁴⁵ See Kat Carlton, *UChicago Study Shows “Bystander Effect” Not Exclusive to Humans*, *UNIV. OF CHI. MED.* (July 8, 2020), <https://www.uchicagomedicine.org/forefront/research-and-discoveries-articles/uchicago-study-shows-bystander-effect-not-exclusive-to-humans> [<https://perma.cc/X338-885C>].

⁴⁶ Daniel B. Yeager, *A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers*, 71 *WASH. UNIV. L.Q.* 1, 15 (1993).

⁴⁷ *Id.* (citing BIBB LATANÉ & JOHN M. DARLEY, *THE UNRESPONSIVE BYSTANDER: WHY DOESN’T HE HELP?* 29–30 (1970)).

⁴⁸ *Id.* at 16 (citing Telephone Interview with Jeffrey Harrison, Professor, Univ. of Fla. Coll. of L. (May 22, 1992)).

B. Bystanders are More Willing to Assist than Previously Thought

Despite extensive research on the bystander effect, a recent study has called it into question.⁴⁹ The study conducted at the United Kingdom's Lancaster University and the University of Copenhagen captured a series of real-life conflicts on surveillance cameras and found that at least one person in the vicinity came forward to help about 90 percent of the time. The more people who were observing a conflict, the better the chances were that someone from the crowd would step in.⁵⁰

While this study does not debunk the bystander effect, it suggests that people have a strong inclination to help those in need and “intervene in certain dicey situations more often than we assume.”⁵¹ Notably, the study's lead author, Richard Philpot, said the findings “overturn the impression of the ‘walk on by society’ in which victims are largely ignored by bystanders” and that “‘people have a natural propensity to help others in distress,’ no matter their nationality.”⁵² Therefore, if people do have a natural inclination to help those in need, implementing a duty to rescue aligns with our social values to help others and protect human life.⁵³ Duty-to-rescue statutes would be a “natural

⁴⁹ Elizabeth Svoboda, *If You're in Danger, Will Bystanders Help?*, GREATER GOOD MAG. (Oct. 2, 2019), https://greatergood.berkeley.edu/article/item/if_youre_in_danger_will_bystanders_help [https://perma.cc/F2RE-RDLW].

⁵⁰ *Id.* (citing Richard Philpot, Lasse Suonper. . . Liebst, Mark Levine, Wim Bernasco & Marie Rosenkrantz Lindegaard, *Would I Be Helped? Cross-National CCTV Footage Shows that Intervention Is the Norm in Public Conflicts*, 75 AM. PSYCH. 66 (2020)). “The overall finding that individuals *do* intervene when it really matters aligns with cross-cultural anthropological accounts suggesting that third-party intervention in everyday conflicts is most likely a human universal.” Wim Bernasco, Kasper Lykke Dausel, Peter Ejbye-Ernst, Lasse Suonper. . . Liebst, Marie Rosenkrantz Lindegaard, Mathias Holst Nicolaisen & Richard Philpot, *Social Relations and Presence of Others Predict Bystander Intervention: Evidence From Violent Incidents Captured on CCTV*, 45 WILEY: AGGRESSIVE BEHAVIOR 598, 599 (2019).

⁵¹ Svoboda, *supra* note 49.

⁵² Hannah Natanson, *Forget What You May Have Been Told. New Study Says Strangers Step in to Help 90 Percent of the Time*, WASH. POST (Sept. 6, 2019, 7:30 AM), <https://www.washingtonpost.com/lifestyle/2019/09/06/high-level-help-was-surprising-new-study-says-strangers-step-help-percent-time/> [https://perma.cc/3ZNN-7ZPL].

⁵³ Duty-to-rescue statutes align with “an important moral principle in United States law: the respect for and preservation of human life.” Montana, *supra* note 21, at 552 (citing Jennifer Bagby, *Justifications for State Bystander Intervention*

extension of ‘the life-affirming values that our criminal laws . . . represent: community togetherness, and recognition and appreciation of our common humanity.’”⁵⁴

Given people’s willingness to help someone in need, the shift from a no-duty-to-rescue rule to one that would require reasonable assistance would not be as drastic a change as critics suggest. This is especially true if the duty-to-rescue statute stipulates that reasonable aid can be given by calling 911. If states were to pass a duty-to-rescue statute, the law would be clear in compelling bystanders to assist.⁵⁵ Instead of using social media to taunt victims—as was the case in the Hollywood robbery—the legal duty would compel bystanders to help either by calling for emergency support or personally rendering aid.

C. Duty-to-Rescue Statutes Work Well with Current Technology and Societal Values

“In contrast to the largely stationary internet of the early 2000s, Americans today are increasingly connected to the world of digital information while ‘on the go’ via smartphones and other mobile devices.”⁵⁶ Notably, most Americans—around ninety-seven percent—are cellphone owners across a wide range of demographic groups.⁵⁷

Given the utility of our cell phones, it seems incumbent upon bystanders to at least call 911 when at the scene of an emergency.⁵⁸ Calling for emergency help is common in the United States: an estimated 240 million calls are made to 911 each year.⁵⁹ Thus, if duty-to-rescue statutes require bystanders to give reasonable aid and specify that reasonable aid may include calling 911, a duty-to-rescue statute is not nearly as onerous as critics have claimed.

Statutes: Why Crime Witnesses Should Be Required to Call for Help, 33 *IND. L. REV.* 571, 583 (2000)).

⁵⁴ *Id.* at 553 (quoting Levy, *supra* note 34, at 628).

⁵⁵ *Id.* at 536.

⁵⁶ *Mobile Fact Sheet*, PEW RSCH. CTR. (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/> [https://perma.cc/X4S4-BEAL].

⁵⁷ *Id.*

⁵⁸ Heather Mongilio, *No Duty to Rescue, Call 911 in Maryland*, *BALT. SUN* (Jan. 29, 2018, 11:00 AM), <https://www.baltimoresun.com/maryland/carroll/news/cc-md-duty-to-rescue-20180117-story.html> [https://perma.cc/X2AN-4PPJ].

⁵⁹ *9-1-1 Statistics*, NAT’L EMERGENCY NO. ASSOC., <https://www.nena.org/page/911Statistics#:~:text=An%20estimated%20240%20million%20calls,in%20the%20U.S.%20each%20year> (last visited May 23, 2022)

In addition to making 911 calls, there has also been a rise in new applications that help facilitate the process by which bystanders and first responders assist victims. For instance, FindER Now is a free smartphone application that allows users, EMTs, doctors, and caregivers to quickly locate the nearest hospital in an emergency.⁶⁰ Developers of the application said they “heard from parents of children with food allergies, thanking [them] for creating the app that saved their child’s life.”⁶¹ Another free application, 911HelpSMS, informs emergency responders of where a user is located and includes enhanced features such as texting family members and provides them with the user’s location.⁶² PulsePoint is another application that helps facilitate rescues for cardiac arrest victims.⁶³ Once emergency dispatchers get a call about a suspected cardiac arrest victim in a public space, they can activate an alert to PulsePoint users who are within a quarter mile of the victim’s location and are trained in cardiopulmonary resuscitation (“CPR”).⁶⁴ While first responders are sent to the scene of the emergency, PulsePoint directs citizen responders who heed the alert to perform “Hands Only” CPR to the victim and provides information on where the nearest publicly accessible defibrillator is located.⁶⁵ PulsePoint is “one of a number of apps that rescue workers, hospital staffers and patients themselves are using to try and improve responses to health emergencies and help save lives.”⁶⁶

Since most Americans have cell phones and there is a plethora of applications that facilitate the process of rendering aid, a duty-to-rescue statute is a sensible approach to help victims in peril. Furthermore, if people have the natural propensity to want to help others,⁶⁷ imposing a duty-to-rescue law would align with our societal values of helping

⁶⁰ Jenni Bergal, *Rescue Workers Use Apps to Help Save Lives*, PEW CHARITABLE TRS. (Apr. 13, 2015), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/4/13/rescue-workers-use-apps-to-help-save-lives> [<https://perma.cc/4AWN-AV66>].

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*; see also PULSEPOINT, <https://www.pulsepoint.org/pulsepoint-respond> [<https://perma.cc/K4RE-2WCL>] (last visited May 23, 2022).

⁶⁵ Bergal, *supra* note 60; see also PULSEPOINT, *supra* note 64.

⁶⁶ Bergal, *supra* note 60. Among the success stories of the PulsePoint application include “that of a 56-year-old Oregon man, who collapsed in his car outside his gym, and a five-week-old baby with an enlarged kidney in Washington state, who went into cardiac arrest at a ballet shop where his sister was getting a tutu.” *Id.*

⁶⁷ Natanson, *supra* note 52.

one another. Duty-to-rescue statutes espouse a sense of solidarity that is otherwise missing in the legal doctrine today.

III. OVERVIEW OF THE NO-DUTY-TO-RESCUE DOCTRINE IN THE UNITED STATES

A. Understanding the History of America's No-Duty-to-Rescue Doctrine

U.S. law traces its roots to the English common law system.⁶⁸ Under a common law system, lower courts must follow precedent by applying the rulings of higher courts.⁶⁹ Conversely, civil law, which places a premium on “social solidarity” is “based upon a comprehensive system of codes and rules that ‘promotes cooperation between human beings.’”⁷⁰ The juxtaposition of a civil law system that is rooted in notions of social solidarity and a common law system that is protective of individual liberty influences each system’s treatment of the duty-to-rescue doctrine. As will be discussed later in this Note,⁷¹ countries with a civil law system generally have general duty-to-rescue laws, whereas common law countries, such as the United States, impose a duty to rescue only as the exception rather than the norm.⁷²

Under U.S. law, there is no general common law duty to rescue unless one of the four exceptions applies: when a statute imposes a duty, when a special relationship exists, when there is a contractual duty, and when care is voluntarily assumed in a way that secludes the victim from the help of others.⁷³ U.S. tort law imposes liability for misfeasance but has long been reluctant to impose liability for nonfeasance.⁷⁴ Recognizing the importance of individual liberty in U.S. law helps elucidate the reasoning behind not imposing a general duty to

⁶⁸ Sharon Yamen, Nanci K. Carr & Aaron Bartholomew, *Am I My Brother's Keeper? How Technology Necessitates Reform of the Lack of Duty to Rescue or Duty to Report Laws in the United States*, 28 B.U. PUB. INT. L.J. 117, 121 (2019).

⁶⁹ *Id.* (citing OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881)).

⁷⁰ *Id.* at 121–22 (quoting *What Is the Civil Law?*, LA. ST. UNIV. L., <https://www.law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/> (last visited Sept. 22, 2018)).

⁷¹ *See infra* Part VI.

⁷² SANFORD H. KADISH, STEPHEN J. SCHULHOFER & RACHEL E. BARKOW, *CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS* 242 (10th ed. 2016) (citing John Kleinig, *Good Samaritanism*, 5 PHIL. & PUB. AFFS. 382 (1976)).

⁷³ WILLIAM L. PROSSER, *HANDBOOK OF THE LAW OF TORTS* § 56, at 338–43 (4th ed. 1971).

⁷⁴ Lisa McCabe, *Police Officers' Duty to Rescue or Aid: Are They Only Good Samaritans?*, 72 CAL. L. REV. 661, 661 (1984).

rescue. The individual rights we think of today are mainly embodied in the Bill of Rights, which was critical to the adoption of the United States Constitution.⁷⁵ People feared broad government regulation and felt certain decisions should be left to an individual to decide. As such, common law tends to be protective of individual autonomy, and thus distinguishes between misfeasance and nonfeasance.⁷⁶ Misfeasance is active misconduct causing actual injury to others for which one may be liable.⁷⁷ Conversely, nonfeasance is a failure to take steps to protect others from harm.⁷⁸ Under a common law framework that values individual liberty, people are regarded as capable of caring for themselves. Therefore, imposing liability for failing to act and failing to prevent harm to others is interpreted as an unwarranted intrusion on personal freedom.⁷⁹

Another way to understand the distinction between misfeasance and nonfeasance is to assign “positive and negative value to an action.”⁸⁰ Misfeasance creates a net injury in which the plaintiff is “positively worse off,” whereas nonfeasance “is the absence of a positive benefit.”⁸¹ With nonfeasance, the victim is neither better nor worse off because “no new injury has been caused.”⁸² When a person takes steps to rescue another in peril and makes the situation worse—that is, aggravates the danger and increases the likelihood of materialized harm—the rescuer must account for the increased risk.⁸³ When a person renders aid and thereby secludes the victim from the help of others,

⁷⁵ *The Bill of Rights: A Brief History*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/other/bill-rights-brief-history> [<https://perma.cc/R36T-JFPV>] (last visited Apr. 25, 2022).

⁷⁶ McCabe, *supra* note 74, at 670 (citing PROSSER, *supra* note 73, § 56, at 339).

⁷⁷ *Id.* at 661 n.3 (citing PROSSER, *supra* note 73, § 56, at 339).

⁷⁸ *Id.* (citing PROSSER, *supra* note 73, § 56, at 339).

⁷⁹ *The Failure to Rescue: A Comparative Study*, 52 COLUM. L. REV. 631, 632 (1952) (citing Robert L. Hale, *Prima Facie Torts, Combination, and Non-Feasance*, 46 COLUM. L. REV. 196, 214 (1908)).

⁸⁰ 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, 1031 (2006) (citing Francis H. Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 UNIV. PA. L. REV. 217, 220 (1908)).

⁸¹ *Id.*

⁸² *Id.* (citing Bohlen, *supra* note 80, at 220–21).

⁸³ Ernest J. Weinrib, *The Case for a Duty to Rescue*, 90 YALE L.J. 247, 257 (1980).

this is “as much misfeasance as lulling the victim into a false sense of security and decreasing his ability to remove himself from peril.”⁸⁴

Courts have long distinguished morality from legality.⁸⁵ Whereas legal duties are enforceable, moral duties are not.⁸⁶ This distinction was emphasized in *People v. Beardsley*, in which a decedent, Blanche Burns, and the defendant had an ongoing affair.⁸⁷ One night, Burns took morphine tablets, which caused her to lose consciousness and later die.⁸⁸ The prosecution charged the defendant with manslaughter and argued that he owed Burns “a duty which he failed to perform, and that in consequence of such failure on his part she came to her death.”⁸⁹ The Supreme Court of Michigan rejected this argument and stated that “the duty neglected must be a legal duty, and not a mere moral obligation. It must be a duty imposed by law or by contract, and the omission to perform the duty must be the immediate and direct cause of death.”⁹⁰ Since Burns and the defendant were not married and did not have one of the special relationships required to trigger a duty, no liability was found.⁹¹ The other exceptions were unavailable given that this was an extramarital affair, no statute imposed a duty to rescue, and the defendant did not seclude the decedent from being rescued. Even though the special relationship exception did not apply, the Court specifically noted that the “[defendant] has been acquainted with [Burns] for some time. They knew each other’s habits and

⁸⁴ *Id.* at 258 (“Although it may be nonfeasance to refuse to rescue a drowning person whose predicament arose independently, it is misfeasance to hide the rope that others might toss out to him.”).

⁸⁵ See *People v. Beardsley*, 113 N.W. 1128, 1129 (Mich. 1907).

⁸⁶ See *id.* at 1129–31 (“The law recognizes that under some circumstances the omission of a duty owed by one individual to another, where such omission results in the death of the one to whom the duty is owing, will make the other chargeable with manslaughter The cases cited and digested establish that no such legal duty is created by mere moral obligation. The fact that this woman was in his house created no such legal duty as exists in law and is due from a husband towards his wife, as seems to be intimidated by the prosecutor’s brief. Such an inference would be very repugnant to our moral sense. Respondent had assumed either in fact or by implication no care or control over his companion.”).

⁸⁷ *Id.* at 1129.

⁸⁸ *Id.* at 1129.

⁸⁹ *Id.*

⁹⁰ *Id.* (citing JOEL PRENTISS BISHOP, COMMENTARIES ON THE CRIMINAL LAW §§ 217, 695 (6th ed. 1877); 21 THE AMERICAN AND ENGLISH ENCYCLOPEDIA OF LAW 99 (2d ed. 1887–96); 21 Cyc. p. 770 et seq.; *State v. Noakes*, 40 A. 249 (Vt. 1897); 2 FRANCIS WHARTON, A TREATISE ON THE CRIMINAL LAW OF THE UNITED STATES § 1011 (7th ed. 1874); WILLIAM LAWRENCE CLARK & WILLIAM LAWRENCE MARSHALL, A TREATISE ON THE LAW OF CRIMES 379 (2d ed. 1905)).

⁹¹ *Id.* at 1131.

character.”⁹² The victim was not a random stranger but, as the Court noted, was someone the defendant knew and had an intimate relationship with.

B. Criticism of the No-Duty-to-Rescue Doctrine: Examination of the “Special Relationship” Exception

To avoid callous decisions, such as that seen in *Beardsley*, courts have recognized several exceptions to the general no-duty-to-rescue rule. To reiterate, a duty to rescue can arise based on statute, a special relationship, a contractual duty, or voluntarily undertaking a rescue and secluding a victim from the help of others. Thus, criticisms of general duty-to-rescue statutes lack force considering the exceptions courts have been willing to recognize. Particularly regarding the special relationship exception, this Note argues the law should not differentiate amongst people in deciding who owes a duty to someone in peril. States should implement a duty-to-rescue statute that would apply to any bystander at the scene of an emergency and who knows that someone is in grave physical harm, regardless of that bystander’s relationship—or lack thereof—to the victim.

Courts have gone beyond mere familial or economic relationships to find that a sufficient special relationship exists to trigger the duty. In *Tubbs v. Argus*, the Indiana Court of Appeals said there was “a sufficient relationship” to impose a duty to render reasonable aid and assistance even though the person upon whom the duty was placed was not liable for the initial injury the plaintiff had sustained.⁹³ In the case, the plaintiff was riding as the passenger in defendant’s car when the car collided with a tree, resulting in injuries to the plaintiff.⁹⁴ After the collision, the defendant exited the car and did not provide assistance to the plaintiff.⁹⁵ The plaintiff then sued, claiming she suffered additional injuries because of defendant’s failure to provide reasonable aid and assistance.⁹⁶ The court cited *L.S. Ayres Co. v. Hicks*, where the Supreme Court of Indiana held that

under some circumstances, moral and humanitarian considerations may require one to render assistance to another who has been injured, even though the injury was not due to negligence on his part Failure to render assistance in such a

⁹² *Id.* at 1129.

⁹³ *Tubbs v. Argus*, 225 N.E.2d 841, 843 (Ind. 1967).

⁹⁴ *Id.* at 841.

⁹⁵ *Id.*

⁹⁶ *Id.*

situation may constitute actionable negligence if the injury is aggravated through lack of due care.⁹⁷

The court distinguished *L.S. Ayres*, which involved an economic benefit to the defendant that was absent in this case.⁹⁸ Nevertheless, the court said that “an affirmative duty to render reasonable aid and assistance is not limited to those cases involving the flow of an economic advantage to the alleged defendant.”⁹⁹

The *Tubbs* court could have relied solely on the theory that because the injury resulted from use of an instrumentality that was under the control of the defendant, liability would be imposed. Instead, the court went one step further by identifying this as a “sufficient relationship” to trigger a duty and that an economic benefit to the defendant is not required.¹⁰⁰ As such, the distinction between what counts as a sufficient “relationship” to trigger a duty is murky. State legislators could make the law clearer and more predictable by requiring any bystander at the scene of an emergency to render reasonable aid. If the goal is to prevent the aggravation of harm, whether a person has a relationship to the victim should not matter in the eyes of the law. Duty-to-rescue statutes can clearly delineate when the duty is triggered instead of relying on the default doctrine that only recognizes limited exceptions.

Another case that shows the futility of the special relationship exception is *Farwell v. Keaton*, where the court recognized a special relationship where two people were “companions on a social venture.”¹⁰¹ In *Farwell v. Keaton*, Siegrist and Farwell waited in a parking lot to return the car Siegrist had borrowed from a friend when Farwell was severally beaten.¹⁰² Siegrist then drove the car for two hours before driving to Farwell’s grandparents’ house, where he parked the car in the driveway and left Farwell asleep in the backseat.¹⁰³ The next morning, Farwell’s grandparents found him in the car and took him to the hospital, where he died due to an epidural hematoma.¹⁰⁴ In the wrongful death action, the Michigan Supreme Court noted that “[w]here such a duty has been found, it has been predicated upon the

⁹⁷ *Id.* at 842 (quoting *L.S. Ayres Co. v. Hicks*, 40 N.E.2d 334, 337 (Ind. 1942)) (emphasis added).

⁹⁸ *Id.* at 843.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Farwell v. Keaton*, 240 N.W.2d 217, 222 (Mich. 1976).

¹⁰² *Id.* at 219.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

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existence of a special relationship between the parties; in such a case, if defendant knew or should have known of other person's peril, he is required to render reasonable care under all the circumstances."¹⁰⁵ The court went on to note that Siegrist and Farwell "were companions on a social venture. *Implicit in such a common undertaking is the understanding that one will render assistance to the other when he is in peril if he can do so without endangering himself.*"¹⁰⁶ The court concluded that

Siegrist knew or should have known when he left Farwell . . . that no one would find him before morning . . . [T]o say that Siegrist had no duty to obtain medical assistance or at least to notify someone of Farwell's condition and whereabouts would be 'shocking to humanitarian considerations' and fly in the face of 'the commonly accepted code of social conduct.'¹⁰⁷

The court's attempt to find a special relationship to impose liability extended the default rule beyond the typical parent-child or employer-employee relationships that are common in duty-to-rescue cases. Here, Farwell and Siegrist were "companions engaged in a common undertaking" and thus "there was a special relationship between the parties."¹⁰⁸ This case, along with *Tubbs*, demonstrates the futility of the special relationship exception and how the exception makes the legal doctrine fundamentally incoherent.¹⁰⁹

State legislators should implement a duty-to-rescue statute so that bystanders, regardless of their relationship to the victim, owe a duty to assist. The aforementioned criticism of imposing such a duty-to-rescue statute is weakened after considering the special relationship exception. As the legal doctrine currently stands, the special relationship exception arbitrarily selects which people owe a duty to assist. A general duty-to-rescue statute would clarify what the law is and expects of bystanders: anyone at the scene of an emergency who knows a person is in danger has a duty to give reasonable assistance, which may be satisfied by calling 911. Such a rule would "legally codify the notion that people have a civic responsibility to look out for one another."¹¹⁰ Consequently, bystanders would feel an increased personal

¹⁰⁵ *Id.* at 221.

¹⁰⁶ *Id.* at 222 (emphasis added).

¹⁰⁷ *Id.* (quoting *Hutchinson v. Dickie*, 162 F.2d 103, 106 (6th Cir. 1947)).

¹⁰⁸ *Id.*

¹⁰⁹ Weinrib, *supra* note 83, at 248.

¹¹⁰ Montana, *supra* note 21, at 553 (quoting Jay Logan Rogers, *Testing the Waters for an Arizona Duty-to-Rescue Law*, 56 ARIZ. L. REV. 897, 903 (2014)).

responsibility to act, which would help to counter any bystander effect problem that may arise.¹¹¹ A duty-to-rescue statute would not only help save lives but also promote a sense of solidarity in the eyes of the law.¹¹²

Examination of other countries' approaches, such as those used in Germany and France, where a duty to rescue is imposed, will be informative about what needs to be done in the United States. Examination of even the unexpected mishaps of imposing a duty to rescue—as seen in France—will also be critical in revising the U.S. doctrine.

IV. LOOKING TO INTERNATIONAL ACTORS & AMERICAN STATES

Examination of how other countries enforce a duty to rescue provides insight for reform efforts in the United States. In the early twentieth century, countries such as Germany, Italy, and Spain enacted “bad Samaritan statutes” that required citizens to either assist others in peril or call the authorities.¹¹³ In 1941, France followed suit and implemented the country's first duty-to-rescue statute.¹¹⁴ Even after World War II, when there were considerable political changes, France, Germany, and Italy maintained their bad Samaritan provisions.¹¹⁵ The embrace of bad Samaritan statutes is not unique to European countries; “almost every Latin American nation has enacted a duty-to-rescue provision in its criminal code.”¹¹⁶

A. German Approach

When the Nazis assumed power in Germany in the 1930s, the duty to rescue was surprisingly broadened.¹¹⁷ One explanation for why the duty was strengthened is the distinction between a liberal and an

¹¹¹ *Id.* (quoting Bagby, *supra* note 53, at 585–86).

¹¹² See generally Natanson, *supra* note 52; see also Brasch, *supra* note 17.

¹¹³ See Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS UNIV. L. REV. 77, 78–79 & n.6 (2005) (“The phrase ‘bad Samaritan statutes’ refers to those statutes that punish with criminal sanction persons who fail to assist or fail to attempt to assist another in need. Likewise, a ‘bad Samaritan’ is one who fails to assist another in need.”).

¹¹⁴ *Id.* at 79 (citing 31 THE AMERICAN SERIES OF FOREIGN PENAL CODES: THE FRENCH PENAL CODE 120 (Gerhard O.W. Mueller ed., Jean F. Moreau trans., 1960)).

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 87 (citing Alberto Cadoppi, *The Failure to Rescue in Continental Criminal Law*, in THE DUTY TO RESCUE: THE JURISPRUDENCE OF AID 93, 104 (Michael A. Menlowe & Alexander McCall Smith eds., 1993)).

¹¹⁷ *Id.* at 86 (citing Cadoppi, *supra* note 116, at 101).

authoritarian state.¹¹⁸ In a liberal state, the basis for liability is a breach of a duty owed and a harm suffered; conversely, in an authoritarian state, liability can be found for threatening the social collective, whether by breaching an ethical duty or a political one.¹¹⁹

Germany's duty-to-rescue provision currently reads:

(1) Whoever does not render assistance in the case of an accident or a common danger or emergency although it is necessary and can reasonably be expected under the circumstances, in particular if it is possible without substantial danger to that person and without breaching other important duties, incurs a penalty of imprisonment for a term not exceeding one year or a fine.

(2) Whoever obstructs a person who is rendering or wishes to render assistance to another person in such a situation incurs the same penalty.¹²⁰

Notably, this provision does not make specific reference to peril. Rather, the duty to rescue arises "in the case of an accident or a common danger or emergency."¹²¹ While the German statute could be broadly applied because it is not limited to a particular individual's suffering but applies to anything that may constitute an "emergency," this is not realized in practice.¹²² Additionally, even though there is no clear standard as to the degree of assistance required to execute a rescue,¹²³ the provision makes clear that, "[w]hoever obstructs a person who is rendering or wishes to render assistance to another person in such a situation incurs the same penalty."¹²⁴

The degree of risk that bystanders should be exposed to as contemplated by the German Penal Code is three-fold.¹²⁵ First, the assistance must be of the type that can be reasonably expected of the would-

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 86 & n.42 (citing Cadoppi, *supra* note 116, at 101) (explaining that "[t]his principle is exemplified by the language of the Nazi statute, which included the phrase *gesundes Volksempfinden* [sound sense of the people]").

¹²⁰ Strafgesetzbuch [STGB] [Penal Code], § 323c, translation at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p3022 (Ger.).

¹²¹ *Id.*

¹²² Schiff, *supra* note 113, at 95.

¹²³ *Id.* at 97–98 (explaining "[p]resumably that aid could encompass notification of the authorities in place of personal rescue").

¹²⁴ Strafgesetzbuch [STGB] [Penal Code], § 323c(2), translation at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p3022.

¹²⁵ Schiff, *supra* note 113, at 100.

be rescuer.¹²⁶ This qualification is a reflection of the “German criminal law doctrine of *Unzumutbarkeit*, namely that the law will not require an individual to act beyond what he is capable of doing.”¹²⁷ The second requirement provides that the assistance must be capable of being accomplished without putting the rescuer in substantial danger.¹²⁸ Third, “the action must not violate other important duties.”¹²⁹

Although Germany’s duty-to-rescue provision does not explicitly require that the would-be rescuer be present at the scene, commentators have taken different stances.¹³⁰ “One commentator interprets the German provision as not requiring geographical proximity, but another takes the opposite view.”¹³¹ The farther one is in geographical distance from the site of an emergency, the less one can reasonably be expected to render aid.

The duty-to-rescue doctrine as applied in German courts (referred to as “bad Samaritan” laws¹³²) presents a striking difference from how the doctrine is applied in the United States.¹³³ For example, in 2017, three people were convicted for failing to help an eighty-three-year-old man who was unconscious in the entryway of a bank.¹³⁴ The three people stepped over and around the man in order to access the ATMs.¹³⁵ The man died a week after the incident, but the District Court of Essen-Borbeck still found the defendants liable and imposed fines that ranged from \$2,900 to \$4,300.¹³⁶ The court rejected the

¹²⁶ *Id.* (32 THE AMERICAN SERIES OF FOREIGN PENAL CODES: THE GERMAN PENAL CODE 192 (Gerhard O.W. Mueller ed., 1961)).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 102.

¹³¹ *Id.* (citing Cadoppi, *supra* note 116, at 106; Aleksander W. Rudzinski, *The Duty to Rescue: A Comparative Analysis*, in *THE GOOD SAMARITAN AND THE LAW* 91, 102 (James M. Ratcliffe ed., 1966)).

¹³² “The phrase ‘bad Samaritan statutes’ refers to those statutes that punish with criminal sanction persons who fail to assist or fail to attempt to assist another in need. Likewise, a ‘bad Samaritan’ is one who fails to assist another in need.” Schiff, *supra* note 113, at 78–79 & n.6.

¹³³ Good Samaritan statutes in the United States do not mandate bystanders to help, but rather protect bystanders who choose to help. See Montana, *supra* note 21, at 540.

¹³⁴ Cassandra Santiago & Stephanie Halasz, *Germany Convicts 3 for Not Helping an Elderly Man Who Collapsed*, CNN, <https://www.cnn.com/2017/09/19/europe/germany-good-samaritan-case-trnd/index.html> [<https://perma.cc/GL44-QT82>] (Sept. 19, 2017, 12:40 PM).

¹³⁵ *Id.*

¹³⁶ *Id.*

defendants' arguments that they thought the homeless man was sleeping and said in a statement that "[b]ecause the man was visible in immediate vicinity of the banking machines, there could be no reasonable doubt for the defendants this was a disaster that required assistance."¹³⁷

A 1941 decision from the *Reichsgericht*, Germany's supreme criminal and civil court, illustrates how Good Samaritans may bring private causes of action against victims for damages incurred during a rescue.¹³⁸ The case involved a husband and wife who were passengers when the driver lost control and crashed into a river.¹³⁹ The three occupants escaped the car, but only the husband and the driver made it to the river bank.¹⁴⁰ After hearing the wife call out, "[a] nearby stranger dove into the river and kept the wife afloat until the driver rescued her, but the stranger drowned."¹⁴¹ As a result, the decedent's family sued the wife and husband for loss of support.¹⁴² The *Reichsgericht* ruled that the husband and wife were required to provide support to the decedent's family because "in calling out, the wife had impliedly made an offer for assistance which the fallen rescuer accepted. Thus, the deceased's estate could maintain an action for the cost of managing the wife's 'affairs.'"¹⁴³

State legislators in the United States should pay special attention to how Germany's duty-to-rescue doctrine applies to all people, regardless of special relationship, and how rescuers are afforded protection under the law. As seen in the 2017 case of the unconscious man in the entry way of a bank, the defendants were held liable even though they were strangers to the decedent.¹⁴⁴ The law should not differentiate amongst bystanders for who is required to help. It was callous and illogical to find no liability in the case of *People v. Beardsley*,¹⁴⁵ where the parties had an intimate relationship, yet courts find liability in cases where there was a "special relationship" because the parties were

¹³⁷ *Id.*

¹³⁸ See Schiff, *supra* note 113, at 107 (citing John P. Dawson, *Rewards for the Rescue of Human Life?*, in *THE GOOD SAMARITAN AND THE LAW* 63, 73 (James M. Ratcliffe ed., 1966)).

¹³⁹ *Id.* (citing Dawson, *supra* note 138, at 73).

¹⁴⁰ *Id.* (citing Dawson, *supra* note 138, at 73).

¹⁴¹ *Id.* (citing Dawson, *supra* note 138, at 73–74).

¹⁴² *Id.* (citing Dawson, *supra* note 138, at 74).

¹⁴³ *Id.* (citing Dawson, *supra* note 138, at 74, 76).

¹⁴⁴ Santiago & Halasz, *supra* note 134.

¹⁴⁵ See *People v. Beardsley*, 113 N.W. 1128, 1129 (Mich. 1907).

on a “social venture.”¹⁴⁶ Whether someone is a stranger, neighbor, or relative, everyone should be required to call for emergency help when someone is in grave physical harm. Further, American state legislators should keep the 1941 case of the drowning stranger in mind.¹⁴⁷ Since bystanders may have a valid concern that by rendering aid he or she is putting their own life at risk,¹⁴⁸ duty-to-rescue statutes may merely impose a duty to report, such that bystanders are not putting themselves in danger when fulfilling their duty.

B. French Approach

When Germany occupied France during the Second World War, “Vichy France passed its own duty-to-rescue statute.”¹⁴⁹ While French commentators debated the duty-to-rescue doctrine, others embraced the doctrine because it aligned with Christian values.¹⁵⁰ Once the War ended, France repealed many of the laws that were passed, but the duty-to-rescue doctrine remained.¹⁵¹

Despite France’s civil law roots, the nineteenth-century version of the French Penal Code did not contain a duty to rescue.¹⁵² The original texts of France’s penal code adopted a dual approach to tort law: “liability was either fault-based or based on the defendant’s relationship with the injury-causing person or thing.”¹⁵³ Today, civil liability in tort is promulgated in Articles 1240 to 1244.¹⁵⁴ Specifically, Article 1241 stipulates that “[e]veryone is responsible for the damage he has caused not only by his act, but also by his negligence or imprudence.”¹⁵⁵ “[T]he notion of fault is deemed sufficiently broad to cover not only positive acts but also abstentions by the tortfeasor.”¹⁵⁶

France’s first duty-to-rescue statute, passed in 1941, punished people “who failed to report would-be criminals as well as those who failed to bring (or call for) aid to someone in peril, whenever such

¹⁴⁶ See *Farwell v. Keaton*, 240 N.W.2d 217, 222 (Mich. 1976).

¹⁴⁷ Schiff, *supra* note 113, at 107.

¹⁴⁸ See *id.*

¹⁴⁹ *Id.* at 86.

¹⁵⁰ *Id.* (citing Cadoppi, *supra* note 116, at 101).

¹⁵¹ *Id.* at 87.

¹⁵² Martin Vranken, *Duty to Rescue in Civil and Common Law: Les Extrêmes se Touchent?*, 47 INT’L & COMPAR. L.Q. 934, 937 (1998).

¹⁵³ Edward A. Tomlinson, *Tort Liability in France for the Act of Things: A Study of Judicial Lawmaking*, 48 LA. L. REV. 1299, 1300 (1988).

¹⁵⁴ Code civil [C. civ.] [Civil Code] arts. 1240–1244 (Fr.).

¹⁵⁵ *Id.* art. 1241.

¹⁵⁶ Vranken, *supra* note 152, at 938.

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intervention did not involve risk the rescuer.”¹⁵⁷ After World War II, Article 63 of the French Penal Code was adopted, which broadened the earlier legislation and eliminated the requirement of serious bodily harm.¹⁵⁸

France’s duty-to-rescue doctrine has remained largely unchanged for sixty years¹⁵⁹ and currently reads:

Anyone who can prevent by immediate action, without risk for himself or third parties, either a crime or an offense against the bodily integrity of the person voluntarily refrains from doing so is punished by five years’ imprisonment and 75,000 euro fine.

The same penalties will apply to anyone who voluntarily abstains from giving assistance, by his personal actions or by causing relief to a person in danger, without risk for himself or for third parties.

The penalties are increased to seven years’ imprisonment and a fine of 100,000 euros when the crime or misdemeanor against the bodily integrity of the person mentioned in the first paragraph is committed against a minor under the age of fifteen or when the person in danger mentioned in the second paragraph is a minor of fifteen years.¹⁶⁰

On its face, the provision seems to require rescues that are easy to execute, but “courts have not interpreted the text literally.”¹⁶¹ Courts have found that merely reporting a peril may be “ineffective assistance.”¹⁶² Additionally, the text neither defines “danger” nor specifies “how the defendant learned that a person was in [danger].”¹⁶³

¹⁵⁷ *Id.* at 937 (citing Note, *The Failure to Rescue: A Comparative Study*, 52 COLUM. L. REV. 631, 640 (1952)).

¹⁵⁸ *Id.* (citing Note, *supra* note 157, at 640).

¹⁵⁹ Edward A. Tomlinson, *The French Experience with Duty to Rescue: A Dubious Case for Criminal Enforcement*, 20 N.Y.L. SCH. J. INT’L & COMPAR. L. 451, 456 (2000).

¹⁶⁰ Code pénal [C. pén.] [Penal Code] art. 223-6 (Fr.). The €75,000 fine is approximately \$80,000 in U.S. Dollars. *Convert Euros US Dollars*, XE CURRENCY CONVERTER, <https://www.xe.com/currencyconverter/convert/?Amount=75000&From=EUR&To=USD> [<https://perma.cc/8B4G-XXL4>] (last visited May 23, 2022); *see also* Tomlinson, *supra* note 153, at 460–61.

¹⁶¹ Tomlinson, *supra* note 153, at 461.

¹⁶² *Id.*

¹⁶³ *Id.*

However, the provision makes clear that liability will be imposed when a person “abstains from bringing to a person in danger the assistance that . . . he could lend him either by his personal action, or by causing relief.”¹⁶⁴

As provided by the statutory text, the failure to render assistance has three basic elements.¹⁶⁵ The victim must first be in danger, and then the defendant must fail to render aid either by intervening personally or calling for help.¹⁶⁶ Third, the defendant must have been able to render aid without risk to themselves or others.¹⁶⁷ The fourth element provides that the defendant’s failure to render aid must have been intentional.¹⁶⁸ The last element limits the duty to rescue, as it requires that the defendant have knowledge of the peril.¹⁶⁹ Despite the last element’s limitation, courts have convicted where the defendant should have known of the danger, or, in other words, the defendant was merely negligent.¹⁷⁰

Even though France’s duty to rescue has three basic elements, the statute’s application is not as straightforward. For example, in a 1996 case where two minors were involved in a car crash, the Court of Appeal of Pau ruled that the passenger was guilty of failing to assist.¹⁷¹ When the driver of the stolen vehicle lost control and crashed, the passenger pulled his severely injured friend out from the car but left him at the scene without calling for assistance.¹⁷² According to expert evidence, but for the lack of medical assistance, the driver may have survived the accident.¹⁷³ The Court of Appeal of Pau found that both the passenger and his mother were civilly liable for the non-pecuniary loss

¹⁶⁴ Code pénal [C. pén.] [Penal Code] art. 223-6.

¹⁶⁵ *See id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*; Tomlinson, *supra* note 153, at 475.

¹⁷⁰ Code pénal [C. pén.] [Penal Code] art. 223-6; Tomlinson, *supra* note 153, at 475.

¹⁷¹ Vranken, *supra* note 132, at 940 n.38 (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260 (Fr.)).

¹⁷² *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260).

¹⁷³ *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260).

incurred by the family of the deceased.¹⁷⁴ The Court rejected the defendant's argument that the victim's fault ought to mitigate liability.¹⁷⁵

This case stands out because of the Court's odd application of the penal statute. The defendant arguably assisted the passenger when he pulled the passenger out of the car after the crash.¹⁷⁶ This is distinct from what occurred in *Tubbs*, where the defendant exited the car without offering the passenger any assistance whatsoever.¹⁷⁷ Furthermore, the French statute does not specify what kind of assistance is required to satisfy the duty.¹⁷⁸ Rather, the statute states that a person who voluntarily abstains from assisting a person in danger, when such assistance is without risk to himself or third parties, violates the statute.¹⁷⁹

In another case, the French Supreme Court found that the defendant should have done more to satisfy the duty to rescue.¹⁸⁰ The case concerned two fisherman who were "lurched at sea, partly because of a cargo ship . . . had sailed too close in violation of the maritime code of conduct."¹⁸¹ While the captain of the cargo ship immediately ordered his crew to call emergency services and launch two buoys, the French Supreme Court held that the captain could have provided assistance himself without posing a risk to the cargo he commanded.¹⁸² For instance, the captain could have thrown an inflatable raft moored to the cargo or hung a ladder along the ship.¹⁸³ This case demonstrates how demanding the duty to rescue is in France. Still, it is debatable whether the captain of a ship could really abandon the cockpit without compromising the safety of his crew. The Court's willingness to read into the statute a heightened duty makes it harder for bystanders to

¹⁷⁴ *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260).

¹⁷⁵ *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260).

¹⁷⁶ *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260).

¹⁷⁷ See *Tubbs v. Argus*, 225 N.E.2d 841, 841 (Ind. 1967).

¹⁷⁸ Code pénal [C. pén.] [Penal Code] art. 223-6.

¹⁷⁹ *Id.*

¹⁸⁰ Cour de cassation [Cass.] [supreme court for judicial matters] crim., Mar. 13, 2007, Bull. crim., No. 06-86.210 (Fr.).

¹⁸¹ DECHERT, SHELVE FOUND., GOOD SAMARITAN LAWS: A COMPARATIVE STUDY OF LAWS THAT PROTECT FIRST RESPONDERS WHO ASSIST ACCIDENT VICTIMS 8 (2014) (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., Mar. 13, 2007, Bull. crim., No. 06-86.210).

¹⁸² *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., Mar. 13, 2007, Bull. crim., No. 06-86.210).

¹⁸³ *Id.* (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., Mar. 13, 2007, Bull. crim., No. 06-86.210).

know what is expected of them and substantiates their fears about rendering imperfect aid.

Another potential issue with the French duty-to-rescue statute is the severity of the punishment: a person failing to rescue can face up to a five-year prison sentence and a fine of up to €75,000 (\$80,039.01).¹⁸⁴ Still, courts have leeway in their sentencing and may, instead of imposing a fine or ordering imprisonment, order community service, revoke a license, or close a commercial establishment.¹⁸⁵

Looking at history, there are at least two explanations for the harsh penalties. As mentioned earlier, the enactment of the duty-to-rescue doctrine occurred when Germany occupied France during World War II.¹⁸⁶ The Vichy government that enacted the provision sought to protect German soldiers stationed in France.¹⁸⁷ Germany pressured the government to “punish French citizens who remained passive when Gaullist or other resistant fighters attacked occupying Nazi troops or sabotaged military or industrial facilities useful to the Nazis.”¹⁸⁸ Apparently, “[n]either the Vichy government nor the Germans believed a small fine was an appropriate response to such passivity.”¹⁸⁹ The second explanation is that the statute “filled gaps created by the development of French criminal law—gaps which afforded immunity to defendants who, in most common law jurisdictions, would be guilty of substantive offenses, either as accomplices or as principals, because they remained passive despite a duty to act.”¹⁹⁰

While the harsh penalties may make sense in the context of France’s history, U.S. states should not incorporate prison sentences or steep fines. France’s duty-to-rescue statute, as written and applied, is too broad and punitive. Since bystanders have fears about putting themselves in danger, exposing themselves to liability, and questioning how much aid is enough to satisfy the duty, a more tailored duty-to-rescue statute is needed in the United States.

¹⁸⁴ Code pénal [C. pén.] [Penal Code] art. 223-6; *Convert Euros US Dollars, supra* note 160; *see also* Tomlinson, *supra* note 139, at 461.

¹⁸⁵ Tomlinson, *supra* note 139, at 461.

¹⁸⁶ Schiff, *supra* note 138, at 86.

¹⁸⁷ Tomlinson, *supra* note 139, at 462–63.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 463.

¹⁹⁰ *Id.*

C. Some American State Approaches

At least three American states—Minnesota, Rhode Island, and Vermont—have implemented broad duty-to-rescue statutes,¹⁹¹ while many other states have enacted Good Samaritan or 911 drug immunity laws that encourage people to seek out medical attention for an overdose¹⁹² and some states have a duty to report for violent crimes or felonies.¹⁹³

To begin, the relevant Minnesota statute provides:

A person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that the person can do so without danger or peril to self or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A person who violates this subdivision is guilty of a petty misdemeanor.¹⁹⁴

Subdivision two, “General Immunity from Liability,” further provides:

A person who, without compensation or the expectation of compensation, renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance, unless the person acts in a willful and wanton or

¹⁹¹ Fifield, *supra* note 21.

¹⁹² See *Drug Overdose Immunity and Good Samaritan Laws*, NAT’L CONF. OF STATE LEGISLATURES (June 5, 2017), <https://www.ncsl.org/research/civil-and-criminal-justice/drug-overdose-immunity-good-samaritan-laws.aspx#:~:text=To%20encourage%20people%20to%20seek,or%20911%20drug%20immunity%20law> [https://perma.cc/PEZ5-9WPB]. For example, the District of Columbia passed a law that protects people who call for emergency help if the individual suffers a drug overdose or witnesses someone having an overdose. In the event someone suffers from a drug overdose and seeks medical assistance by calling 911, the unlawful possession of a controlled substance will not be considered a crime. D.C. CODE § 7-403 (2022).

¹⁹³ See Thomas Seigel, *Reporting Crimes: Witnessing, Ignoring, Falsely Reporting, and Lying*, LAWYERS.COM, <https://www.lawyers.com/legal-info/criminal/criminal-law-basics/reporting-crimes-witnessing-ignoring-falsely-reporting-and-lying.html> (Jan. 12, 2022). For example, an Ohio statute states, “no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.” OHIO. REV. CODE. ANN. § 2921.22(A)(1) (LexisNexis 2022).

¹⁹⁴ MINN. STAT. § 604A.01(1) (2021).

reckless manner in providing the care, advice, or assistance. This subdivision does not apply to a person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering the care, advice, or assistance.¹⁹⁵

Minnesota's duty-to-rescue statute is a good model because it breaks down the requirements of when a duty is owed, how the duty can be fulfilled, and shields good-faith rescuers from liability. First, the Minnesota statute clarifies the meaning of "scene of emergency," stating that it includes areas outside the confines of a hospital that are "threatened by or exposed to spillage, seepage, fire, explosion, or other release of hazardous materials, and includes ski areas and trails."¹⁹⁶

The distinction between a hospital and places outside of a hospital is unhelpful on its own because virtually anyplace can count as a "scene of an emergency." However, the statute narrows what may qualify as a "scene of emergency" by adding "*areas* threatened by or exposed to spillage, fire, explosion, or other release of hazardous materials."¹⁹⁷ Unlike the previous line that distinguished generally between a hospital and the outside world, this clause underscores more natural settings that may make a place dangerous and qualify as a "scene of emergency." Additionally, implicit in the statute is that more secluded or remote areas such as "trails" and "ski areas" qualify.¹⁹⁸ There is a sense of urgency embodied in what qualifies as a "scene of emergency" because of the physical elements and potential remoteness issues. For instance, if someone is having a severe allergic reaction on a trail, the sense of urgency is increased if the trail is not frequented by others and thus the hiker is more dependent on anyone to step in and help.

The statute also clarifies when a person must assist. Explicit in the statute is that a person must be *physically present* because the statutes require a person to be "*at* the scene of an emergency."¹⁹⁹ Additionally, the statute imposes a duty to assist when a person "knows that another person is exposed or has suffered *grave physical* harm."²⁰⁰ The physical presence and knowledge requirements help to clarify the scope of the duty because, as discussed earlier, line-drawing issues

¹⁹⁵ *Id.* § 604A.01(2)(a).

¹⁹⁶ *Id.* § 604A.01(2)(b).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* § 604A.01(1).

²⁰⁰ *Id.*

arise when there are many people surrounding a victim. A bystander who is further removed from the situation might not be able to see or hear what is going on to have the knowledge that is required to act. The statute also specifies the bystander must know the victim “is exposed or has suffered grave physical harm.”²⁰¹ This language is further modified by use of the words “grave” and “physical” to suggest that the victim must be under a heightened amount of risk and need the help of others. Use of the word “physical” suggests bystanders must be able to tell, upon observation, that the victim is in danger.

The statute then sets forth the standard to give assistance. The statute incorporates the basic rule that a bystander owes a duty to assist to the extent the bystander can do so without danger to themselves or others.²⁰² The statute then requires the bystander to give “reasonable assistance to the exposed person.”²⁰³ The rescue need not be perfect but only “reasonable.” The statute specifies that “reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel.”²⁰⁴ Thus, a bystander can satisfy the duty to rescue by calling for “law enforcement or medical personnel.”²⁰⁵ That is, the bystander does not have to do anything to the victim to satisfy the duty: CPR is not required; lifting or carrying the victim to safety is not required; and no contact with the victim is necessary. This provision should help alleviate bystanders’ fears that they may risk their lives by rescuing someone who is in grave physical danger. If the bystander chooses to intervene and assist the victim in a way that goes beyond calling for professional help, the statute merely requires that the bystander give “reasonable assistance.”²⁰⁶

Minnesota’s statute is generally protective of bystanders in the sense that violators are not punished harshly, and rescuers are shielded from liability. Unlike France, which imposes up to a five-year prison sentence and fine of €75,000 (\$80,039.01),²⁰⁷ Minnesota imposes a substantially less severe punishment. Anyone who violates the Minnesota statute is guilty of a petty misdemeanor, for which a fine cannot

²⁰¹ *Id.*

²⁰² STUART M. SPEISER, CHARLES F. KRAUSE, ALFRED W. GANS & MONIQUE C.M. LEAHY, *AMERICAN LAW OF TORTS: RESCUE DOCTRINE AND SITUATIONS* § 9.23 (citing *Regelbrugge v. State*, 432 P.3d 859 (Wash. Ct. App. 2018)).

²⁰³ MINN. STAT. § 604A.01(1).

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Code pénal [C. pén.] [Penal Code] art. 223-6 (Fr.); *Convert Euros US Dollars*, *supra* note 160.

exceed three hundred dollars.²⁰⁸ Whereas France's duty-to-rescue statute has been criticized for its harsh applications, such criticisms are not applicable to this statute. Minnesota's duty-to-rescue statute shields rescuers from liability. The statute provides that "a person who . . . renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in render[ing] the [assistance]," unless the bystander acted in a "willful and wanton or reckless manner."²⁰⁹ Incorporation of the immunity provision helps calm bystanders' fears about rendering imperfect aid and thus exposing themselves to liability. It also furthers the goal of the statute, which is encourage lay people to assist when someone is in danger.

Similar to Minnesota's statute, Vermont's duty-to-rescue statute "requires a person who knows that another is exposed to grave physical harm" to give reasonable assistance to the exposed person.²¹⁰ Notably, Vermont's statute requires bystanders to assist, unless such efforts would endanger the rescuer, interfere with important duties owed to others, or assistance is already being rendered by others.²¹¹ Whereas the Minnesota statute imposes the duty to rescue only on persons who are "at the scene of an emergency,"²¹² Vermont's statute requires anyone who "knows" of the danger to assist which is less informative.²¹³ Minnesota's statute more clearly details when and where a duty is triggered by focusing on scenes of an emergency, whereas Vermont's statute does not. While Vermont's statute seems practical by recognizing that bystanders do not owe a duty when assistance is already being provided by others, Vermont's statute could have more precisely tailored by describing the context of when a duty arises.

Alternatively, Rhode Island and Massachusetts have implemented more limited statutes that require bystanders to report certain crimes.²¹⁴ Rhode Island's statute imposes a duty when someone is at the "scene of the crime" and knows "another person is a victim of sexual assault, murder, manslaughter, or armed robbery."²¹⁵ The person has a duty to report the crime "as soon as reasonably practicable" and

²⁰⁸ MINN. STAT. § 609.02(4)(a).

²⁰⁹ *Id.* § 604A.01(2).

²¹⁰ VT. STAT. ANN. tit. 12, § 519 (2022).

²¹¹ *Id.*; see also Silver, *supra* note 28, at 426.

²¹² MINN. STAT. § 604A.01(1).

²¹³ See Silver, *supra* note 28, at 427; VT. STAT. ANN. tit. 12, § 519.

²¹⁴ See Silver, *supra* note 28, at 427.

²¹⁵ 11 R.I. GEN. LAWS § 11-1-5.1 (2022).

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any person who violates the statute will be subject to either “imprisonment for a term not exceeding six (6) months, or by a fine” ranging from \$500 to \$1,000.²¹⁶ Victims are exempt from the Rhode Island statute, however, and failure to comply is classified as a misdemeanor.²¹⁷ The Massachusetts statute is similar to Rhode Island’s but it does not constitute a jailable offense.²¹⁸

Whereas the Rhode Island and Massachusetts statutes focus on crime scenes and require bystanders to report to the appropriate law enforcement official, Minnesota’s statute addresses scenes of an emergency that may not involve any criminal activity. Minnesota’s statute is focused on ensuring victims get the assistance they need to alleviate pain; it is not about law enforcement, which is its own distinct and important goal.

*D. Implementing Duty-to-Rescue Laws in American States**1. Criticisms of Imposing Duty-to-Rescue Laws in the United States*

There are various arguments against a broad duty-to-rescue rule in the United States. First, in the technical and legal framework, tort law’s requirement of causation becomes muddled when a rescuer fails to call 911: did the failure to call 911 cause the victim’s harm or death? Second, enforceability and line-drawing issues may also arise: how much assistance is needed to satisfy a broad duty to rescue rule, and what happens when there are several bystanders at the scene? Which bystander(s) should be held liable? Vagueness issues such as these may violate the Due Process Clause of the Fourteenth Amendment, which requires fair and adequate notice.²¹⁹ Additionally, the duty to report may violate a rescuer’s First Amendment right to free speech.²²⁰

²¹⁶ *Id.*

²¹⁷ Silver, *supra* note 28, at 427; see also Matthew E. Dyson, *Always on Duty: Can I Order You to Report Crimes or to Intervene?*, 224 MIL. L. REV. 176, 188 (2016); 11 R.I. GEN. LAWS § 11-1-5.1.

²¹⁸ Silver, *supra* note 28, at 427; MASS. GEN. LAWS ch. 258C, § 13 (2022) (“No person who, in good faith, provides or obtains, or attempts to provide or obtain, assistance for a victim of a crime as defined in section one, shall be liable in a civil suit for damages as a result of any acts or omissions in providing or obtaining, or attempting to provide or obtain, such assistance unless such acts or omissions constitute willful, wanton or reckless conduct.”); MASS. GEN. LAWS ch. 268, § 40 (2022).

²¹⁹ *Vagueness Doctrine*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/vagueness_doctrine [https://perma.cc/RU9Q-6YMP] (last visited May 23, 2022).

²²⁰ Yamen, Carr & Bartholomew, *supra* note 68, at 138.

Other positions include a rescuer's concern of exposing herself to liability for confessing that she was at a scene but failed to help, which could impact further fact-finding in a situation. Another concern a rescuer may have is exposure to additional dangers such as exposure to infection.

For an individual to be found liable for injuring another under U.S. tort law, the person needs to be the proximate cause of that injury.²²¹ One must do something to be liable. As many argue, if the law begins to recognize non-occurrences as causes, it would open a "Pandora's box of insuperable difficulties."²²² Generally, when a person fails to take an action, whether by failing to provide assistance or prevent an injury, that person cannot be the legal cause of any resulting injuries.²²³ Since it is conceptually difficult to identify a person's omission as causing an injury, liability typically is not found in such a circumstance.²²⁴

If a general duty to rescue is imposed, as this Note urges, several issues are raised concerning practical issues. It is unclear how much intervention would be needed to effectively render aid and satisfy the duty to rescue in any given circumstance. Additionally, it is unclear physically how far removed from the scene of an emergency one needs to be to not be found liable: what happens if there is a crowd surrounding the victim and a bystander who is spatially removed from the victim and cannot see the victim? Further, a bystander's choice not to intervene may be due to subjective decision-making processes such as

²²¹ Robert Justin Lipkin, *Beyond Good Samaritans and Moral Monsters: An Individualistic Justification of the General Legal Duty to Rescue*, 31 *UCLA L. REV.* 252, 267 (1983).

²²² *Id.*

²²³ *Id.*

²²⁴

Generally, a premises possessor owes a duty of care to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land; this duty generally does not encompass a duty to protect an invitee from 'open and obvious' dangers, however, if there are 'special aspects' of a condition that make even an 'open and obvious' danger 'unreasonably dangerous,' the premises possessor maintains a duty to undertake reasonable precautions to protect invitees from such danger.

Ernest H. Schopler, Annotation, *Modern Status of the Rule Absolving a Possessor of Land of Liability to Those Coming Thereon for Harm Caused by Dangerous Physical Conditions of Which the Injured Party Knew and Realized the Risk*, 35 *A.L.R.3d* 230 (2022) (citing *Mann v. Shusteric Enters., Inc.*, 683 N.W.2d 573 (Mich. 2004)).

deciding how best to render aid or confusion about whose responsibility it is to render aid when there are many bystanders.²²⁵

Critics of the duty to rescue—specifically the duty to report—argue that the First Amendment of the U.S. Constitution protects not only freedom of speech “but also the freedom not to speak.”²²⁶ The Supreme Court in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, reiterated the established principle that freedom of speech prohibits the government from telling people what they must say.²²⁷ The Court distinguished *West Virginia State Board of Education v. Barnette*,²²⁸ and found that the law at issue did not violate the First Amendment because it did not “dictate the content of the speech at all.”²²⁹ Pursuant to the compelled speech doctrine as set forth in decisions like *Rumsfeld* and *Barnette*, many argue that punishing a failure to call for help is an obstruction of one’s individual liberty in deciding not to speak.²³⁰

Additionally, some argue that implementing a duty to report may be intrusive and burdensome when a bystander 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.”²³¹ Thus, detecting violations would be administratively difficult, or even potentially impossible to track. For example, a bystander who fails to intervene most likely will not report his own failure to assist, and a third party may not report another bystander’s failure to act because

²²⁵ See Lipkin, *supra* note 221, at 271.

²²⁶ Yamen, Carr & Bartholomew, *supra* note 68, at 138 (citing HAIG BOSMAJIAN, THE FREEDOM NOT TO SPEAK (1999)).

²²⁷ *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 61 (2006).

²²⁸ *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) (declared a state law requiring schoolchildren to recite the Pledge of Allegiance and to salute the flag unconstitutional).

²²⁹ *F. for Acad. & Institutional Rts.*, 547 U.S. at 62. The law at issue in this case denied federal funding to institutions of higher education that have a policy or practice that prohibits the military from gaining access to campuses to recruit students. The law had an exception for institutions that had a longstanding policy of pacifism based on historical religious affiliation. *Id.* at 55.

²³⁰ Yamen, Carr & Bartholomew, *supra* note 68, at 138.

²³¹ Montana, *supra* note 21, at 550. The reluctance to report a crime is extremely pertinent to today’s ongoing discussions about the relationship between police officers and communities of color. This Note specifically addresses the duty-to-rescue doctrine, and thus police accountability is beyond its confines. However, if states are going to reform the duty-to-rescue doctrine by implementing at least a duty to report, states will also have to focus attention on the roles of law enforcement officers. See *id.*

reporting could, in some circumstances, expose that person to liability as well.²³²

Even if it could be proven that a bystander was aware of the victim's plight, many juries may be reluctant to convict the bystander because they may sympathize or identify with her.²³³ Jurors may put themselves in the bystander's position and "be reluctant, rightly or wrongly, to 'get involved' for fear of exposing ourselves to various dangers—e.g., infection from [the victim's] blood, [exposure] to the same danger, being 'set up' by [the victim] and hidden accomplices, false accusations . . . , and legal liability"²³⁴

Lastly, broad duty-to-rescue statutes run the risk of violating the Due Process Clause of the Fourteenth Amendment, which prohibits states from implementing penal statutes with offenses that are not clearly defined as to give reasonable notice to citizens.²³⁵ Even if a statute may be textually clear, it will still be challenging to identify how much danger is required to trigger the duty.²³⁶ While one could dismiss this objection and stress that judges can use the reasonableness standard, "it is fundamentally unfair to judge a person's action with perfect hindsight when the situation in which that person was placed by a string of events over which the person had no control was so unsettling as to have diminished the would-be Good Samaritan's perceptive faculties."²³⁷

2. *Arguments in Support of Implementing Duty-to-Rescue Laws in the United States*

The emphasis that duty-to-rescue laws do not fit within misfeasance and nonfeasance distinction that is required in tort law is misplaced. To reiterate, American tort law imposes liability for

²³² *Id.*; see also Fifield, *supra* note 21 (citing legal experts, David Hyman and Eugene Volokh, who argue that Good Samaritan laws may not be effective and that the laws "aren't likely to change the behavior of people who witness emergencies and, if they do, the consequences of having a law in place would outweigh the benefits. Imposing a duty to rescue, Hyman said, may make situations more deadly by compelling people to act in perilous circumstances. And the laws may make it less likely that people who witness criminal acts cooperate with police, Volokh said. *If a witness knows the law requires them to immediately report what they see, and they don't, they may be less likely to come forward later out of fear that they will be prosecuted*") (emphasis added).

²³³ Levy, *supra* note 34, at 675.

²³⁴ *Id.* at 675–76.

²³⁵ See Schiff, *supra* note 113, at 121–22.

²³⁶ See *id.* at 123.

²³⁷ *Id.*

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misfeasance, meaning active misconduct that causes actual injury to another, and does not impose liability for nonfeasance.²³⁸ However,

[t]he analysis of nonfeasance in terms of risk creation also explains why, even though a risk may have arisen independently of a defendant, he is responsible for *aggravation* of the danger, that is, for substantially increasing the likelihood that it will materialize in harm. By diminishing the ability of the victim or of others to abate the danger, the defendant, though innocent of the original danger, must account for the increased risk.²³⁹

Under this analysis, in the event of an emergency where a person is suffering from grave physical harm, a bystander would be under the duty to mitigate that harm by calling 911 for medical help. Even if medical professionals arrive too late to either save the victim or alleviate the harm, the bystander will have satisfied the duty by calling 911. The emphasis on the aggravation of harm due to the bystander's failure to assist is essentially the claim that was brought in the *Tubbs* case where the plaintiff was injured in the car accident and the driver failed to help.²⁴⁰ The defendant indeed owed a duty to and should have assisted the plaintiff.²⁴¹

Second, the concerns about line-drawing and vagueness challenges under the Due Process Clause of the Fourteenth Amendment can be addressed by enacting a concise statute that sets the parameters of when and where a duty is imposed and how the duty can be satisfied. Minnesota's duty to rescue statute, which is analyzed in Section IV.C, serves as an exemplary model because the language is precise and considers bystanders' fears about rendering imperfect aid, exposing themselves to danger, and potential liability. In Minnesota, a duty will arise at the "scene of an emergency" where a bystander "knows that another person is exposed or has suffered grave physical harm."²⁴² The knowledge requirement coupled with a requirement that a bystander be physically present at the "scene of an emergency"²⁴³ helps to narrow the duty to a specific setting where a bystander can observe that another is in grave harm.

Additionally, Minnesota's statute requires bystanders "give reasonable assistance" to the extent that the person can do so without

²³⁸ McCabe, *supra* note 74, at 661 n.3.

²³⁹ Weinrib, *supra* note 83, at 257 (emphasis added).

²⁴⁰ See *Tubbs v. Argus*, 225 N.E.2d 841, 841 (Ind. 1967).

²⁴¹ *Id.* at 843.

²⁴² MINN. STAT. § 604A.01(1) (2021).

²⁴³ *Id.* § 604A.01(1)(b).

endangering themselves or others.²⁴⁴ In fact, a bystander can satisfy the duty to assist by “*attempting to obtain* law enforcement or medical personnel.”²⁴⁵ At a minimum, Minnesota’s duty to rescue requires bystanders to call 911, which considers bystanders’ fears of rendering imperfect aid or compromising their own safety. If a bystander does intervene and provide aid to the victim, Minnesota’s statute shields rescuers from civil liability,²⁴⁶ which also helps alleviate bystanders’ concerns about exposing themselves to liability. Minnesota’s statute is sufficiently precise in outlining the duty and what is required of bystanders who are at the scene of an emergency, which make it less likely the statute will be invalidated on Due Process grounds. For a statute to be found void, it must be so unclear that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.²⁴⁷ This is not an issue in a statute like Minnesota’s, which clearly delineates the standard.²⁴⁸

A First Amendment challenge to a duty-to-rescue statute like Minnesota’s also would be without merit. Minnesota’s statute requires bystanders to give “reasonable assistance,” which can be satisfied by calling 911.²⁴⁹ While critics may object that bystanders should not be compelled to report, it is important to note, as an initial matter, Minnesota’s statute does not require bystanders to report.²⁵⁰ Rather, bystanders have the choice as to how they would like to provide aid. Minnesota’s statute provides that “[r]easonable assistance *may include* obtaining or attempting to obtain aid from law enforcement or medical personnel.”²⁵¹ Instead of calling for professional support, people who have a duty can choose to personally “render care” or offer “advice” which can also satisfy the duty to rescue.²⁵² Furthermore, even if bystanders do call 911, this would not infringe on the bystander’s First Amendment rights because the statute does not compel speech that espouses a viewpoint with which the speaker might not wish to be associated or otherwise place a substantial burden on protected speech.²⁵³ Because Minnesota’s duty-to-rescue statute does not favor

²⁴⁴ *Id.* § 604A.01(1).

²⁴⁵ *Id.* (emphasis added).

²⁴⁶ *Id.* § 604A.01(2).

²⁴⁷ *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983).

²⁴⁸ *See supra* Section IV.C.

²⁴⁹ MINN. STAT. § 604A.01(1).

²⁵⁰ *Id.*

²⁵¹ *Id.* (emphasis added).

²⁵² *Id.* § 604A.01(2).

²⁵³ *See generally* *Keeton v. Anderson-Wiley*, 664 F.3d 865, 875 (11th Cir. 2011).

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or disfavor a particular type of message or speaker, it is not subject to strict scrutiny.²⁵⁴ The state has a substantial interest in protecting the general welfare of its people by enacting a duty-to-rescue statute, and the statute does not burden the exercise of protected speech beyond what is necessary for its achievement.²⁵⁵ The decision to call for emergency help is not compelled speech: bystanders have a choice as to how they can render assistance.

Finally, in terms holding violators accountable, the state can impose fines for infractions and the victim or the victim's estate can sue the bystander for failing to help. As seen in *Tubbs*, if a victim suffers aggravated harm because the bystander failed to assist, the victim can sue and seek recovery against the bystander.²⁵⁶ Additionally, the state can impose a monetary fine like Minnesota does for anyone who violates the statute.²⁵⁷ Enforcement would focus on bystanders who *failed* to assist, not on people who actually tried to call 911 or help the victim because, as is the case in Minnesota, there should be an immunity provision for rescuers.²⁵⁸ Enforcement then would fall upon the state and/or the victim or decedent's estate. Based on the forgoing reasons, a duty-to-rescue statute would prove workable and survive judicial scrutiny.

V. PROPOSAL

In implementing a duty-to-rescue statute, states should follow Minnesota's example. Minnesota's statute sets forth a clear and workable framework. As an initial matter, Minnesota's statute defines what "a scene of an emergency" is which helps to know which bystanders have a duty and which people do not.²⁵⁹ A duty is imposed when a bystander has knowledge that a "person is exposed or has suffered grave physical harm."²⁶⁰ It is explicit in the statute that the bystander be close in physical proximity to know that the victim is in grave physical danger. Once the duty is triggered, the bystander shall give reasonable assistance to the extent that the "[bystander] can do so without

²⁵⁴ Lucien J. Dhooge, *The First Amendment and Disclosure Regulations: Compelled Speech or Corporate Opportunism?*, 51 AM. BUS. L.J. 559, 604 (2014).

²⁵⁵ *Id.*

²⁵⁶ *Tubbs v. Argus*, 225 N.E.2d 841, 841 (Ind. 1967).

²⁵⁷ *See* MINN. STAT. § 604A.01(1).

²⁵⁸ *See id.* § 604A.01(2).

²⁵⁹ *Id.* § 604A.01(2)(b).

²⁶⁰ *Id.* § 604A.01(1).

danger or peril to self or others.”²⁶¹ The bystander may choose to personally intervene by rendering aid, giving advice, or choosing to call law enforcement or medical help.²⁶² Once the bystander gives assistance, the statute shields the bystander from any civil liability, absent any willful, reckless, or wanton misconduct.²⁶³

U.S. states should also look to France and Germany’s duty-to-rescue statutes before enacting their own. On a positive note, the German and French duty-to-rescue statutes apply to all people regardless of special relationships. However, states should not adopt a duty to rescue that is identical to the European approach. As seen in France, such statutes can be applied in situations where the conduct in question does not resemble the “paradigmatic conduct that is used to argue for a duty to rescue.”²⁶⁴ For instance, in the case about the drowning fisherman, the French Supreme Court found the sailor liable under the duty-to-rescue statute because even though the captain ordered his crew to call emergency services and launch buoys, he could have done more to render aid, whether by hoisting a ladder along the ship or throwing a raft into the ocean.²⁶⁵ While the sailor could have done more in the Court’s view, he arguably tried to help by commanding his crew to throw two buoys and call for medical services.²⁶⁶ The sailor does not seem to be as callous a person as the defendant in *People v. Beardsley*, who left the decedent to die when she overdosed on morphine.²⁶⁷

While the German and French statutes specifically provide that a rescuer need not put themselves in danger, the statutes go too far in imposing a penalty of imprisonment to the rescuer. Additionally, the German statute provides that anyone who “obstructs a person who is rendering or wishes to render assistance to another person in such a situation incurs the same penalty.”²⁶⁸ Given America’s focus on individual liberty, German’s penalty of imprisonment is too harsh for potential rescuers.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.* § 604A.01(2)(a).

²⁶⁴ Hyman, *supra* note 35, at 685 (citing Tomlinson, *supra* note 153, at 457, 475).

²⁶⁵ DECHERT, *supra* note 181, at 8.

²⁶⁶ *Id.*

²⁶⁷ *People v. Beardsley*, 113 N.W. 1128, 1129 (Mich. 1907).

²⁶⁸ Strafgesetzbuch [STGB] [Penal Code], § 323c(2), translation at https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p3022 (Ger.).

If adopted in the United States, such a coercive rule with harsh penalties may prevent bystanders from assisting in the first place. As discussed prior,²⁶⁹ potential rescuers may fail to assist people in peril out of fear of prosecution. Thus, legislators should not substantiate such fears by explicitly providing that failure to assist may result in imprisonment. Bystanders should feel compelled to act but should not be disincentivized to assist out of the fear of potential repercussions. Instead of imposing imprisonment as a punishment, duty-to-rescue statutes should impose a fine like Rhode Island's statute does, which can be anywhere between \$500 to \$1,000.²⁷⁰

Additionally, when drafting duty-to-rescue statutes, legislators should be as specific as possible because duty-to-rescue statutes can be applied in "unexpected" ways. For instance, in the 1996 involving the two teenage boys who stole a car and later got into a car accident, the defendant's mother was also held liable.²⁷¹ Drafting legislation that is narrowly tailored will also circumvent potential constitutional challenges like the vagueness doctrine grounded in the Due Process Clause of the Fourteenth Amendment.²⁷²

The transition from a legal rule where no duty to rescue is imposed to the imposition of an affirmative duty will not be as drastic as critics may argue. First, duty-to-rescue statutes create a bright-line rule that all people have a duty to assist, which is preferable to the amorphous and unpredictable special relationship exception.²⁷³ Additionally, "research shows, that, despite what people think, humans are incredibly helpful in real-life situations . . . The bystander effect shows that under some circumstances, the presence of others reduces the likelihood of helping somewhat. It doesn't mean that humans don't help."²⁷⁴ The law requiring people to assist others in peril—without putting themselves in danger—is therefore consistent with behavioral norms.²⁷⁵ Research indicates that Americans are willing to rescue,

²⁶⁹ See *supra* Part II.

²⁷⁰ 11 R.I. GEN. LAWS § 11-1-5.1 (2022).

²⁷¹ Vranken, *supra* note 189, at 940 & n.38 (citing Cour de cassation [Cass.] [supreme court for judicial matters] crim., June 19, 1996, Bull. crim., No. 260 (Fr.)).

²⁷² See *supra* Part IV.

²⁷³ See *supra* Section III.B.

²⁷⁴ Nell Greenfieldboyce, *To Come to the Rescue or Not? Rats, Like People, Take Cues from Bystanders*, NPR (July 8, 2020, 2:01 PM), <https://www.npr.org/sections/health-shots/2020/07/08/888767466/to-come-to-the-rescue-or-not-rats-like-people-take-cues-from-bystanders> [<https://perma.cc/T62D-ZM3P>].

²⁷⁵ See Marin Roger Scordato, *Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law*, 82 TUL. L. REV. 1447, 1464 (2008) (citing Hyman, *supra* note 35, at 654).

with the proven number of rescuer deaths compared to non-rescue deaths being approximately seventy to one.²⁷⁶

VI. CONCLUSION

Minnesota's duty-to-rescue statute is an exemplary model because it specifically notes that calling for medical help or law enforcement counts as reasonable assistance.²⁷⁷ Bystanders do not have to put themselves in danger to satisfy the duty to rescue and will be protected under the immunity provision if they render aid.²⁷⁸ A majority of states have already implemented Good Samaritan statutes aimed at impaired driving and alcohol responsibility, which suggests states are willing to impose duties on bystanders when their assistance can be life-saving.²⁷⁹

A critical component of the duty-to-rescue statute is specifying when the duty is triggered. Under a duty-to-rescue statute like Minnesota's, bystanders who are at the scene of the emergency and know a person is in peril must provide reasonable aid. To make duty-to-rescue statutes effective in the United States, potential rescuers should be immune from liability. A major reason why people are hesitant to call 911 in the first place is a fear of prosecution and potential liability.²⁸⁰ Rhode Island's statute, which imposes either a fine or a term of imprisonment not to exceed six months,²⁸¹ seems draconian. Potential rescuers are already in a difficult position when witnessing a victim in peril and having to take immediate action. Rescuers should not be penalized under the law for trying to take reasonable steps to help the victim and call for assistance. If a bystander intervenes by attempting to rescue the victim or calls for help but the victim still dies, the rescuer should be protected by the law. If the bystander fails to help altogether, and the victim dies, the bystander may be fined for failing to call authorities.

Given that majority of Americans have cell phones and there has been a plethora of new, free apps that make it easier to render aid, the argument that imposing a duty to rescue amounts to a significant

²⁷⁶ Hyman, *supra* note 35, at 657.

²⁷⁷ MINN. STAT. § 604A.01(1) (2021).

²⁷⁸ *Id.* § 604A.01(2)(a).

²⁷⁹ *Good Samaritan Statutes State Map*, FOUND. FOR ADVANCING ALCOHOL RESP., <https://www.responsibility.org/alcohol-statistics/state-map/issue/good-samaritan> [<https://perma.cc/8PMA-8VE6>] (last visited Feb. 4, 2022).

²⁸⁰ Levy, *supra* note 34, at 673.

²⁸¹ 11 R.I. GEN. LAWS § 11-56-1 (2022).

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burden on bystanders seems weak. When someone's life is at stake, any inconvenience or disturbance to one's personal autonomy in dialing 911 is insubstantial compared to the risk of someone losing their life. We use our phones every day to go about our lives, whether it be a tap on the iPhone screen to purchase our Starbucks coffee or to take a ride on the subway. It is part of life to weigh choices and make decisions, some mundane and others life changing. When someone is in grave physical danger and needs help, the law should step in to make the decision clear: bystanders have a duty to assist. By requiring people to assist those in peril, the law could potentially save lives and foster a sense of solidarity amongst strangers.