Good afternoon Senator Rick Jones, other committee members, and the citizens that are here today. My name is Shirley Mitchner. This is my husband Steven Mitchner and our daughter Bianca Lawson. We are the parents and sister of Brandon James Mitchner. Here with us today are a few of our supporters of a "Duty to Act" legislation in honor of our son/brother Brandon Mitchner.

I am here today to explain why Michigan should have a "Duty to Act" law.

First, will everyone in the room please close your eyes for a moment. Now imagine that on a hot Saturday evening you and your family were celebrating your husband birthday and your anniversary. Your child said to you that he was going on party bus to celebrate one of his friends 21st birthday. (Your child had never been on a party bus), and you told him to be careful, and do the right thing. He said to you, I know mom, you trained me well and gave you a hug and kiss and told you that he loves you. That was the last time you saw your child because he was left in the river too long. His body was in such a bad state that my husband and I were not allowed to see him.

Imagine your child went on a party bus with his friend and 7 other acquaintances. His friend's father rented the party bus, which took them to 8 bars. His friend's father paid for all the alcohol that was sitting on the table waiting for the young men to consume upon their arrival at each bar. Imagine at one of the bars your child says I am sick (threw up) and stated I want to go home but the party bus continued to the rest of the bars (your child is not a drinker). Eventually, the party bus made it back to Brannigan Brother Bar where the young men started the celebration. Your child reaches for his car keys and said I want to go home, I am not feeling good. There was one young man who was not drinking and did not offer to take your child home. The other young men stopped your child from walking to his car, they turned your child in another direction, so your child proceeded to walk down Washington Street and one of the young men followed him, never walking in front or side by side but behind him. This is around 11:30 at night. Everyone else disbursed. Your child is intoxicated .22 (can you imagine). Your child and the young man that followed him ended up on a dead end street that led into the Grand River. Your child went over a cliff and ended up in the

river. The young man that was with your child heard a splash and went down the cliff and said both of us aren't going to be gone. **Now you may open your eyes.** Imagine the person gets on his cell phone and calls two other people and I-Cab, but not 9-1-1. The I-Cab takes the person to another person's house where a party was going on and he went to bed, then woke up 2 hours later and asked has any one seen your child. Then he went back to bed and 9 hours later woke up and started calling people to see had they seen your son, but never calling the police to report that your child was missing.

At the sight of the incident were an apartment complex on one side of the river and a house on the other side. The person didn't call 911 or knock on the doors, or scream or holler. Instead, he left your child in the river. Can you imagine that someone would do this to your child, sibling, grandchild, a love one, or any human being?

A similar incident in Michigan is a 17 year old girl who died of a drug overdose and was with friends and they left her in a hotel room. In Nevada, a seven year old girl was raped, abused and murdered in a ladies bathroom and there was a person who could have saved her life but instead watched part of it and then went outside the bathroom and waited for his friend to come out. The person never got help for the child. The person was not prosecuted for any crime; the one who killed the girl is serving time in prison.

There are many stories like these in which had someone got immediate help that person could have been saved. If just one person benefits from the "Duty to Act" legislation, then it is a good idea and should be implemented.

There are nine states that have some form of "good Samaritan"/"Duty to Act" law in effect. Imposing an obligation to act does little to restrict the freedom of individuals, but rather encourages active participation in our society.

Too many cases of onlooker apathy demonstrate that Michigan needs to enact "Duty to Act" laws to encourage and remind people to do what they ought to feel obligated to do, "M.I.Y.M = Make it your Mission to do the right thing." This was Brandon's quote.

Few can argue that it is immoral to help another; therefore legislators should ensure that our laws accurately reflect our morality. We must hold people accountable for their actions.

In conclusion:

It's our civic duty as moral citizens to help or to get help for anyone in distress or injured. Walking away from a traffic accident or leaving a new born child in a dumpster and saying nothing, when virtually everyone owns a cell phone, every business has a phone, and police patrol major streets 24 hours a day.

Everyone should take the time to dial 9-1-1; it is only three numbers, even if he or she does not want to physically help the person themselves.

Remember the saying "do unto others as you would have them do unto you".

Brandon's family and friends' hearts were broken on June 28, 2014. We lost a remarkable young man, who had so much to contribute to this society. Our lives will never be the same. If only the person had gotten help, our son, brother, nephew, cousin, friend, and uncle might still be here today. Although, it is too late for our Brandon, it is not too late to save someone else's life.

Our suggestions for penalties for violating the "Duty to Act" law are:

- A fine of $20,000 - $50,000, depending upon if the person dies
- Two to five years in prison
- Community service at a nursing home or with EMT sixteen hours a week for two years.

The penalty must be stringent in order for people to take the "Duty to Act" law seriously.

Senator Rick Jones and other senators on this committee, we ask for your support in introducing and passing a Duty to Act law in this great State of Michigan.

What do we need to do to get this legislation passed?

May God bless each one of you and thank you all.

Mr. and Mrs. Steven and Shirley Mitchner and Family

IMPOSING CRIMINAL AND CIVIL PENALTIES FOR FAILING TO HELP ANOTHER: ARE "GOOD SAMARITAN" LAWS GOOD IDEAS?

Angela Hayden*

> DEBBIE will never forget the gun held to her face, or the warm, dizzy feeling after the baseball bat slammed into her head, or the kicks that jolted her ribs as she lay on her Woodbridge driveway convinced that playing dead was the only way to stay alive.
>
> And Debbie will never forgive the three men who sat back and waited as their two friends beat her bloody in a failed attempt to steal her Acura Integra in the steamy, early-morning darkness of Aug. 18.[1]

I. INTRODUCTION

We are repeatedly dismayed at such repugnant displays of apathy on the part of witnesses to crimes as was evidenced in the case of a New Jersey woman who was nearly beaten to death during the course of a carjacking.[2] At the same time, many people are indignant to the suggestion that our society impose a legal obligation to help others in need, claiming that such an obligation severely limits individual liberty.[3] The popular television series "Seinfeld" brought national attention to statutes criminalizing an omission, or failure to help another.[4] Despite vocal opposition, what happened to the characters in the final episode of "Seinfeld"[5] could happen to just about anyone if state

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[1] Lilo Stainton, *Victim Pleads for "Good Samaritan" Law*, ASBURY PARK PRESS (Neptune, N.J.), Sept. 17, 1998, at A14.

[2] *See id.* Time and again the public becomes outraged at a particularly offensive incident in which a witness watches a violent crime or terrible accident and does nothing to prevent it or assist the victim. *See infra* Part III and accompanying text for accounts of such stories.

[3] *See* John Adler, Relying upon the Reasonableness of Strangers: Some Observations about the Current State of Common Law Affirmative Duties to Aid or Protect Others, 1991 WIS. L. REV. 867, 871 (1991). *See also e.g.*, *Public Forum, Compelling Witnesses to Intervene During Crimes is Hazardous*, DAILY NEWS L.A., Sept. 19, 1998, at N18.

[4] The popular NBC sitcom, "Seinfeld" concluded its run with an episode in which the characters were arrested, tried, and convicted for failing to help a man during a mugging.

[5] For the readers who did not view the final episode of "Seinfeld", which aired

legislators respond to the current public outcry for "good Samaritan" laws.[6] In the aftermath of the death of Princess Diana[7] and the appalling murder of Sherrice Iverson,[8]

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in May, 1998, the four main characters, Jerry, Kramer, Elaine, and George were arrested, tried, and convicted in Latham, Massachusetts for failing to help a victim of a violent mugging. The four cheered on the attacker while Kramer videotaped the assault, excited at the prospect of getting "good stuff" on tape.

[6] The term "'good samaritan' laws" is intended to apply to laws that impose an affirmative duty on individuals to help, assist, or aid a crime or accident victim, or to report a crime or accident. Most states have "good samaritan" laws that relieve medical professionals or emergency medical technicians of liability for injuries caused during the course of providing emergency medical assistance. *See, e.g.,* ALA. CODE § 6-5-332 (1993); CONN. GEN. STAT. § 52-557b (West 1991 & Supp. 1996); FLA. STAT. ANN. § 768.13 (West 1986); LA. REV. STAT. ANN. § 37.1731-.1732 (West 1988 & Supp. 1996); MINN. STAT. ANN. § 604A.01 (2) (West Supp. 1997); MISS. CODE ANN. § 73-25-38 (1995); N.J. STAT. ANN. § 2A:53A-13 (West 1987); N.C. GEN. STAT. § 90.21.14(a), (b) (1996); N.D. CENT. CODE § 32-03.1 (1996); OKLA. STAT. ANN. tit. 76, § 5 (West 1995); 42 PA. CONS. STAT. ANN. § 8331 (1982); TENN. CODE ANN. § 63-6-218 (1990 & Supp. 1996); TEX. CIV. PRAC. & REM. CODE ANN. § 74.001-.002 (West 1986 & Supp. 1997); UTAH CODE ANN. § 78-11-22 (1996).

Currently, only four states have "good samaritan" laws that impose a general duty to assist a crime victim or injured person, or to report a witnessed crime. *See* Rudy Larini, *Jersey Looking to Prosecute Passivity: States Rarely Invoke "Good Samaritan" Law*, THE STAR-LEDGER (Newark), Oct. 19, 1998 at 13. Minnesota, Rhode Island, Vermont, and Wisconsin have general duty to assist laws. *See* MINN. STAT. ANN. 604A.01 (West 1997); R.I. GEN. LAWS § 11-56-1 (1997); VT. STAT. ANN. tit. 12, § 519 (1997); WIS. STAT. ANN. § 940.34 (West 1997). Massachusetts and Florida require observers to report sexual assaults to authorities. *See* FLA. STAT. ANN. § 794.027 (West 1998); MASS. GEN. LAWS ANN. ch. 268, § 40 (West 1998). Ohio and Washington have laws that require individuals to report felonies in certain situations. *See* Jack Wenick, Note, *Forcing Bystander to Get Involved: Case for Statute Requiring Witness to Report Crime*, 94 YALE L.J. 1787, 1803-04 (1985).

[7] *See* Keith Dovkants, *Paris Judge Will Decide if Death Crash Was a Crime*, THE EVENING STANDARD (London), Sept. 2, 1997, at 4. Following the death of Princess Diana in September, 1997, French authorities investigated and prosecuted photographers on the scene of the fatal car accident for violating France's duty to act statute. *See also*, *infra* § II B for further discussion of the French duty to act law.

[8] *See* Stacy Finz, *Killing of Girl, 7, in Casino Spurs Good Samaritan Bills*, SAN FRANCISCO CHRONICLE, Dec. 8, 1998, at A21. Sherrice Iverson was a seven-year-old girl who was stalked in a Nevada casino by eighteen-year-old Jeremy Strohmeyer. *See id.* Strohmeyer followed Iverson into the women's restroom of the casino, after playing a game of "hide and seek", where Strohmeyer assaulted and murdered the girl. *See id.*

the media and public have focused attention on states that require ordinary citizens to come to the aid of accident or crime victims.[9] At least four states have introduced bills that would impose a duty to act where none existed previously under the common law.[10] These statutes have received both criticism and praise from politicians, the media, and the public.[11] An often voiced criticism is that such statutes are contrary to our established social mores, requiring us to act in ways that are not in accord with our traditional notions of the obligations owed to strangers, and that unnecessarily violate individual liberty.[12] The popularity of duty to act laws draws from the multitude of incidents of indifference that people often find repugnant to those same mores.[13] Contrary to popular belief, these laws are based on a solid historical foundation,[14] and have many counterparts in European countries.[15]

There exists the potential for both great benefit and detriment in the implementation of "good Samaritan" statutes, and the established European models provide examples that American legislators should examine while constructing new laws. This Article provides a discussion and analysis of the European "good Samaritan" statutes in Part II.[16] Part III identifies the American states that have already passed duty to act laws and the penalties that the laws provide.[17] As a result of many recent events widely publicized by the media, some states have proposed "good samaritan" laws, which will also be addressed in Part III. Part IV includes a discussion of the debate surrounding enactment of duty to act laws, examining the benefits and drawbacks to such laws in the context of European and American laws.[18] Part IV also postulates a model statute for

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Strohmeyer's friend, David Cash, knew of the incident and failed to report it to the authorities, yet did not commit any acts to conceal or aid the crime. *See id.* Thus, Cash was not and could not be prosecuted for any crime. *See id. See also* infra note 1 and accompanying text for a further discussion of this case.

[9] *See id.*

[10] Legislation has been introduced in New Jersey, California, Florida, and Nevada for duty to act laws. *See* Stainton, *supra* note 1; David Karp, *Bill Compels Witnesses to Report Crimes*, ST. PETERSBURG TIMES (Florida), Sept. 26, 1998, at 3B.

[11] *See e.g.* Adler, *supra* note 3.

[12] *See infra* § IVA for a discussion of criticism against imposing duties to act.

[13] *See infra* § IVA for discussion of support for "good samaritan" laws.

[14] *See* Public Forum, *supra* note 3 (arguing that duty to act laws shock the conscience of Americans). *See also infra* notes 20 - 153 and accompanying text for a discussion of the historical background of duty to act laws throughout the world.

[15] *See* F.J.M. Feldbrugge, *Good and Bad Samaritans: A Comparative Survey of Criminal Law Provisions Concerning Failure to Rescue*, 14 AM. J. COMP. L. 630 (1966).

[16] *See infra* notes 20 - 43 and accompanying text.

[17] *See infra* notes 44- 121 and accompanying text.

[18] *See infra* notes 122- 150 and accompanying text.

American states that are considering imposing a statutory duty to act where none existed previously.[19] This article concludes in Part V.

II. EUROPEAN "GOOD SAMARITAN" LAWS

A. *Historical Background*

During World War II, European countries began to pass duty to act laws.[20] Since World War II, many European criminal codes have identified failing to assist a crime victim or injured person as a criminal offense.[21] Under the German-controlled Vichy government in France, the French enacted their "good samaritan" law in an effort to "stem terrorism against the German army."[22] The Germans thus sought to ensure their unimpeded progress in their quest to conquer the world by forcing French citizens to report each other to the government or face stiff penalties. Many other Western European countries enacted "good samaritan" laws around the same time as the French law.[23] It would therefore seem that the Germans had a significant influence on those countries as well. Many Eastern European countries, including former Czechoslovakia, Bulgaria, Poland, Hungary, and Ukraine, enacted "good samaritan" laws in the 1950s and 1960s, at the height of Soviet domination.[24] It would appear that the Soviet Union may have exerted pressure on these countries to pass such laws to force citizens to "rat each other out", much as the Germans did during World War II. Thus, so-called "good samaritan" laws may not have all been instituted to serve good purposes.[25]

There is no significant historical background to reveal the motivation behind enactment of "good samaritan" laws in the Scandinavian countries, the Netherlands, and old Russia in the nineteenth century.[26] It is certainly possible, however, that the church pressed the governments to include these provisions for the good of all, or to remind individuals that the moral lessons taught by the church are important and relevant in everyday life. The Russian Criminal Code of 1845 did include an ecclesiastical penalty

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[19] *See infra* notes 151- 153 and accompanying text.

[20] *See* Feldbrugge, *supra* note 15. *See also* John Pardun, *Good Samaritan Laws: A Global Perspective*, 20 LOY. L.A. INT'L & COMP. L. J. 591, 592 (1998).

[21] *See* Feldbrugge, *supra* note 15, at 631. In 1966, at least 23 European countries had some type of "good samaritan" law in effect that imposed a general duty to assist a person in need. *See id.* at 655-57.

[22] *See* Pardun, *supra* note 20, at 593 (citation omitted).

[23] *See* Feldbrugge, *supra* note 15, at 655-57.

[24] *See id.*

[25] *See* Pardun, *supra* note 20, at 593.

[26] *See* Feldbrugge, *supra* note 15, at 655-57.

for violation of the duty to act law, which would support the theory that the church was behind this early movement to require people to help others in need. But even these early laws had historical precedents.

Ancient Indian and Egyptian law required people to help others who were in danger or injured.[27] Later Greek and Roman scholars eschewed this requirement, instead developing bodies of law that recognized the importance of free will and acting because one chooses to act.[28] Duty to aid or assist requirements were absent from the codified law globally until the mid-nineteenth century, when the Russian Criminal Code of 1845 required people to help others in danger.[29] Soon after Russia instituted its duty to act law in the 1845 Code, Tuscany,[30] the Netherlands,[31] and Italy[32] followed suit.

B. European Countries That Have "Good Samaritan" Laws

As of 1966, at least 21 European countries had some form of a duty to act law.[33] These laws can be broken down into a number of categories, including laws that require the danger be: 1) immediate or imminent;[34] 2) evident;[35] 3) real,[36] and; 4) harmful.[37]

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[27] *See id.* at 630.

[28] *See id.*

[29] *See id.* Feldbrugge notes that he does not believe that the Russians were more "enlightened" than other Europeans of the time, but rather that the Russians were secluded from Western Europe and therefore did not subscribe to the same theories of "liberalism and freedom of the individual" that were present in Europe during the eighteenth and nineteenth centuries. *Id.* In 1845, however, the year Russia's duty to act law first appeared, Nicholas I was the ruling tsar. *See* S. Frederick Starr, *Russian Art and Society1800-1850, in* ART AND CULTURE IN NINETEENTH-CENTURY RUSSIA 99 (Theofanis George Stavrou ed., (1983)). Nicholas I is considered to have taken "the arts more seriously than did any other Russian tsar with the exception of Catherine II, [and to have] . . . demonstrated considerable knowledge and up-to-date judgment." *Id.* During this period in Russia, the country was experiencing tremendous Western influence in literature, art, architecture, music, and culture, and embraced openly the French culture. *See id.* at 87. It was also during this period that Russian literature and culture underwent its "Golden Age". *See id.* It therefore seems that Feldbrugge's conclusion is shortsighted and not based on facts or knowledge of the Russian culture of the time.

[30] *See id.* at 631. Tuscany implemented its statute in 1853.

[31] *See id.* The Netherlands included a duty to act law in its 1881 criminal code.

[32] *See* Feldbrugge, *supra* note 15, at 631. Italy's Zanardelli Code of 1889 included a duty to act law.

[33] *See id.* at 655-57. As of the writing of Feldbrugge's article, Albania, Belgium, Bulgaria, former Czechoslovakia, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, the Netherlands, Norway, Poland, Romania, Russia, Spain, Turkey, Ukraine, and former Yugoslavia. *See id.*

[34] *See id.* at 632.Hungary, the Netherlands, Poland, and former Yugoslavia have

Some laws include the additional requirement that the victim, or potential victim, actually be helpless or in need of assistance.[38]

The penalties differ greatly,[39] with some laws requiring as little as a fine or community service and others allowing up to five years in prison.[40] While prosecutions under these laws are uncommon, it seems that Europeans are happy to have the laws available to prosecute the most egregious offenders.[41] Europeans view the laws as a tool to punish undesirable conduct, namely, failing to help another human when there is little risk or inconvenience to oneself.[42] The use of duty to act laws in Europe has not led to serious "encroachments on personal liberty" as feared by American critics of "good samaritan" laws.[43] Rather, the European "good samaritan" laws, despite the numerous variations, provide Americans with models to use in developing a similar, ideal American statute.

III. AMERICAN "GOOD SAMARITAN" STATUTES

A. *Historical Background – Duty to Act under the Common Law*

Under common law, individuals do not have a duty to take affirmative action to help a person in need.[44] The common law imposes neither civil nor criminal liability for

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such a provision.

[35] *See id.* Denmark, Norway, Spain, and Russia specifically require that the danger be evident.

[36] *See* Feldbrugge, *supra* note 15 at 633The Finnish and French laws require that the danger be real, as opposed to "presumed".

[37] *See id.* Former Czechoslovakia, Poland, Romania, Hungary, Turkey, German, and France all either explicitly require, or have determined through judicial interpretation, that the danger must present danger of physical harm to the victim.

[38] *See id.* at 633. Bulgaria, Russia, the Netherlands, Italy, France, Germany, and Spain require that the victim be in need of assistance before the duty to assist attaches.

[39] *See id.* at 646-7.

[40] *See id.* The French statute carries the most severe penalty, which allows up to five years in prison and a fine of up to approximately $80,000.00 (current figure). *See id.* The French statute is often used to prosecute individuals involved in crimes who do not take affirmative acts that rise to the level of criminal culpability. *See id.* at 647.

[41] *See* Feldbrugge, *supra* note 15, at 654. *See also, e.g.,* Lara Marlowe, *Establishment Turns on Photographers*, THE IRISH TIMES, Sept. 3, 1997, at 7 (indicating that the French judge assigned to investigate the death of Princess Diana planned to investigate photographers on charges of violating France's duty to act law).

[42] *See* Feldbrugge, *supra* note 15, at 654.

[43] *See id.*

[44] *See* RESTATEMENT SECOND OF TORTS §314 (1977). There is no liability for

failing to take action to help another.[45] There are, however, seven limited exceptions to the general rule.[46] First, the existence of certain special relationships between individuals creates a duty to act under common law.[47] Second, when one has caused harm to another, then the one who caused the harm must help the other or be subject to civil liability.[48] Third, if a person begins to render aid to an injured person or crime victim, but for some reason discontinues that aid, then the person will be held accountable for the injuries if the victim is left in a worse position.[49] Thus, once a person "takes charge and control of the situation, he [or she] is regarded as entering voluntarily into a relation which is attended with responsibility. Such a [person] will then be liable for a failure to use

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nonfeasance, that is, the failure to take affirmative action to assist another. *See id.*

[45] *See id.* One common law crime, misprision of felony, required persons who had some role, even a slight one, in a crime to report the knowledge they had to authorities. *See also* Wenick, *supra* note 6, at 1791. In the United States, there has been a federal misprision of felony statute that requires individuals to report knowledge of felonies for nearly ninety years. *See* 18 U.S.C.A. § 4 (1982). U.S. attorneys have considered this rarely recognized law a useful tool in prosecutions. The statute provides that:

> Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C.A. § 4 (West 1998).

[46] *See* David C. Biggs, *"The Good Samaritan is Packing": An Overview of the Broadened Duty to Aid Your Fellow Man, With the Modern Desire to Possess Concealed Weapons*, 22 DAYTON L. REV. 225, 228 (1997). *See also infra* notes 47-56 and accompanying text.

[47] *See* DAN DOBBS, TORTS AND COMPENSATION 479 (1993). Special relationships include: common carrier-passenger; innkeeper-guest; innkeeper-stranger (a duty to protect a stranger from injury by a guest); employer-employee; ship-crewman; shopkeeper-business visitor; host-social guest; jailer-prisoner; school-pupil; drinking companions; landlord-trapped trespasser; safety engineer-laborer; physician-patient; psychologist-stranger (a duty to protect a stranger from harm at the hands of the psychologist's patient); manufacturer-consumer; landlord-tenant; parole board-stranger (a duty to protect strangers from a released prisoner); husband-wife; parent-child; and tavern keeper-patron. *See also* Saul Levmore, *Waiting for Rescue: An Essay on the Evolution and Incentive Structure of the Law of Affirmative Obligations*, 72 VA. L. REV. 879, 899 (1986).

[48] *See* South v. National Railroad Passenger Corp., 290 N.W.2d 819 (N.D. 1980).

[49] *See* Farwell v. Keaton, 240 N.W.2d 217 (Mich. 1976).

reasonable care for the protection of the plaintiff's interests."[50] A number of states have codified this common-law doctrine, some going so far as to criminalize such behavior.[51] Fourth, a special relationship between a non-acting third party and a party causing harm or injury to another.[52] For example, a parent may be held responsible for the harmful actions of his or her child.[53] Fifth, property owners may be held criminally liable for injuries sustained by a person on the premises.[54] Sixth, statutory obligations, such as "good samaritan" laws, may require action that is not mandated by common law.[55] Seventh, and last, contractual obligations, such as for security guards or lifeguards, may require one to take affirmative action to protect or assist another in need.[56] The most

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[50] W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 56 (5th ed. 1984.)

[51] At least two states, Massachusetts and Minnesota, statutorily require that one who causes harm to another must determine the extent of the other person's injuries and immediately render assistance. *See* MINN. STAT. ANN. 609.662 (West 1997). The Minnesota statute encompasses the limited situation of when a person discharges a firearm and causes harm to another, imposing penalties based upon the injuries sustained by the victim. *See id.* §609.662 (2). MINN. STAT. ANN. 609.662 (2)(b) penalizes offenses as follows:

> if the injured person suffered death or great bodily harm as a result of the discharge, to imprisonment for not more than two years or to payment of a fine of not more than $4,000, or both;
>
> if the injured person suffered substantial bodily harm as a result of the discharge, to imprisonment for not more than one year and one day or to payment of a fine of not more than $3,000, or both;
>
> otherwise, to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

Minn. Stat. Ann. 609.662 Subd. 2 (2)(b)(1)-(3) (West 1997).

Other states, such as Utah, require individuals involved in motor vehicle accidents to stop at the scene and assist any injured persons, if possible. *See* UTAH CODE ANN. § 41-6-29 (1998).

[52] *See* Biggs, *supra* note 46, at 229.

[53] *See id.*

[54] *See id.* (citing Commonwealth v. Welansky, 55 N.E.2d 902 (Mass. 1944) (convicting a bar owner of manslaughter when he had ordered the bar's fire exits locked and the bar burned to the ground causing several people to die because someone else mishandled a light source inside the bar)).

[55] *See id. See also infra* notes 57-121 and accompanying text for a discussion of such statutes.

[56] *See id.* at 228.

1. Minnesota

Minnesota's duty to act law[66] requires that "[a] person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall . . . give reasonable assistance to the exposed person." The Minnesota statute does not, however, require that people report crimes they have witnessed.[67] Minnesota's "good samaritan" law can be broken down into six components that identify the requirements under the law. There must be 1) "a person at the scene of an emergency who" 2) "knows that" 3) "another person is exposed to or has suffered" 4) "grave physical harm", and that person must 5) "without danger or peril to self or others" 6) "give reasonable assistance to the exposed person."[68] The statute does qualify seeking aid from the police or medical professionals as "reasonable assistance."[69] It is clear under the Minnesota law that one is obligated only to help an injured or endangered person, so long as help can be administered without creating a risk to oneself or others. Violation of the law is considered a petty misdemeanor, and therefore carries a small penalty.[70] The Minnesota law creates a general duty to assist.[71]

2. Rhode Island

Rhode Island's "good samaritan" law is nearly identical to subdivision 1 of the Minnesota statute.[72] It consists of the same elements as the Minnesota law, and imposes the same requirements.[73] The Rhode Island law does not, however, define what constitutes "reasonable assistance", but it does, unlike the Minnesota statute, set the maximum penalty for violations of the law at six months in prison or five-hundred dollars fine, or both.[74] The Rhode Island law imposes a general, affirmative, statutory duty to assist others in need.[75] This statute does not include a reporting requirement.[76]

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[66] MINN. STAT. ANN. 604A.01 §1 (West 1997).
[67] *See id.*
[68] *Id.*
[69] *See id.*
[70] *See id.*
[71] MINN. STAT. ANN. 604A.01 §1 (West 1997).
[72] *See* R.I. GEN. LAWS § 11-56-1 (1997).
[73] *See id.*
[74] *See id.*
[75] *See id.*
[76] *See id.*

important exception to the common law in the context of this Article is the statutory obligation exception, as legislators can create a common law exception through passing "good samaritan" laws.

B. States That Currently Have "Good Samaritan" Statutes in Effect

While currently nine states have some form of "good samaritan" law in effect,[57] very few prosecutions have been made under these laws.[58] The fact is that prosecutors are already overworked and under compensated, and few district attorneys can afford to expend insufficient resources pursuing people who violate these statutes. The nine "good samaritan" statutes can be classified into three different groups. There are those that impose a general duty to help injured persons, those that require assisting victims of certain crimes through reporting the offenses, and those that require only reporting of crimes.

Minnesota, Rhode Island, and Vermont all have statutes that impose a general duty to assist an injured person, whether that person is injured as a result of an accident, crime, or other circumstances.[59] Wisconsin also imposes a general duty to help, but applies it only to crime victims.[60] Florida requires one to assist a victim of a sexual battery in the form of reporting the crime to authorities,[61] while Massachusetts and Washington mandate reporting violent crimes in general.[62] Ohio has established a duty to report knowledge of felonies,[63] and Colorado requires reporting of all crimes.[64] While the statutes apparently seek different objectives ranging from retribution to education,[65] they each contain elements that may be significant in formulating a model statute for all states to implement.

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[57] In this context, the term "good samaritan" law is to include both those laws that impose a general duty to assist an injured or endangered person and those that require reporting crimes.

[58] *See* Larini, *supra* note 6, at 13.

[59] *See infra* notes 66 - 80 and accompanying text.

[60] *See infra* notes 81 - 87 and accompanying text.

[61] *See infra* notes 88 - 90 and accompanying text.

[62] *See infra* notes 91 - 99 and accompanying text.

[63] *See infra* notes 100 - 104 and accompanying text.

[64] *See infra* notes 105 - 111 and accompanying text.

[65] *See* NEWSWEEK, Mar. 21, 1983, at 25. Massachusetts and Wisconsin enacted their laws in response to an incident that took place in New Bedford, Massachusetts in 1983. *See id.* Attackers in the incident repeatedly raped a woman on a pool table while numerous witnesses watched and cheered the attackers. *See id.* None of the witnesses reported the attack, although it lasted for over an hour and fifteen minutes. *See id.* The events were depicted in the motion picture "The Accused".

3. Vermont

The Vermont statute[77] is quite similar to both the Minnesota and Rhode Island laws with two significant differences – Vermont specifically does not require individuals to assist an injured person if other assistance is already being provided or if providing assistance would interfere with "important duties owed to others".[78] Critics of "good samaritan" laws often argue that requiring *all* individuals to provide assistance to persons in need is foolish because it only creates chaos at the accident scene. The Vermont statute overcomes this criticism by making it clear that once reasonable assistance is initiated, other onlookers are relieved of responsibility.[79]

Considering that the maximum penalty under the Vermont law is a fine of $100.00,[80] it would seem that Vermont is not interested in prosecuting the most egregious offenders, but rather is interested in raising awareness about the issue.

4. Wisconsin

Wisconsin's duty to act law[81] is the only one in the country that requires individuals both to assist crime victims and to report crimes they have witnessed.[82] The Wisconsin statute is noteworthy for not requiring individuals to assist another in just any emergency situation, which would encompass accidents or numerous other non-criminal situations, but rather it mandates assistance to crime victims only.[83] In this way the Wisconsin differs greatly from the Minnesota, Rhode Island, and Vermont "good samaritan" laws.[84] Another significant difference in the Wisconsin law is that it mandates first summoning law enforcement officers, presumably immediately so as to allow them to provide the necessary assistance, or, in the alternative, providing assistance personally to the crime victim.[85]

The scope of the Wisconsin law, while creating a *general duty* to assist crime victims, is therefore more limited than that of the Minnesota, Rhode Island, and Vermont laws, in that it applies only to crime victims, and requires individuals to summon authorities first.[86] While it is a subtle distinction, it could turn out to be a significant one under certain circumstances. For example, if a person who has received CPR training

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[77] *See* VT. STAT. ANN. tit. 12, §519 (a) (1999).
[78] *See id.*
[79] *See id.*
[80] *See id.* at §519 (c).
[81] *See* WIS. STAT. ANN. § 940.34 (West 1997).
[82] *See id.* at 2(a).
[83] *See id.*
[84] *See supra* notes 66-80 and accompanying text.
[85] WIS. STAT. ANN. § 940.34(2)(a) (West 1997).
[86] *See id.*

were to come upon an injured person in a well-populated area in Wisconsin, he or she would be obligated to summon authorities *or* provide reasonable assistance.[87] If the same situation happened in Minnesota, Rhode Island, or Vermont, then he or she would be obligated to provide reasonable assistance to the victim, *which may include* summoning authorities. A judge or jury in the latter three jurisdictions could conceivably find that, if the CPR- trained person chose to summon the authorities in order to assist the victim when there were other people in the immediate area who were willing and able to help, then the person violated the statute *because reasonable assistance* would have been personally tending to the injured victim. Again, it may be a subtle distinction, but it could be significant. In fashioning a model statute, it is important to determine the goal sought.

5. Florida

Florida requires reporting of sexual battery, but does not impose a general duty to assist any injured person or crime victim.[88] The primary focus of the Florida statute is to have sexual crimes reported, as evidence by paragraph 2 of the statute.[89] The scope of the Florida law is clearly restricted to sexual battery, based on both the title and language of the statute.[90]

6. Massachusetts

Massachusetts imposes a duty to report certain crimes that, unlike the Florida duty to report law, encompasses virtually all violent crimes.[91] The Massachusetts statute,

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[87] Assume for purposes of this hypothetical that the person trained in CPR was not a physician and owed the victim no other special duty.

[88] *See* FLA. STAT. ANN. § 794.027 (West 1998).

[89] *See id.*

[90] FLA. STAT. ANN. § 794.027 Duty to report sexual battery; penalties.

[91] *See* MASS. GEN. LAWS ANN. ch 268, § 40 (West 1998):

> Whoever knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime shall, to the extent that said person can do so without danger or peril to himself or others, report said crime to an appropriate law enforcement official as soon as reasonably practicable. Any person who violates this section shall be punished by a fine of not less than five hundred nor more than two thousand and five hundred dollars.

Id.

merely eliminates liability for disclosure or reporting of information.[111] The *Zimmerman* decision effectively took away the "bite" of the Colorado statute's mandatory reporting requirement, which demonstrates that careful wording of a statute is essential to its survival.

C. States that have proposed statutes.

At least four states have recently proposed "good samaritan" laws, all inspired by specific instances of witness apathy towards victims. California and Nevada lawmakers introduced legislation requiring people to report crimes against children in response to the Sherrice Iverson incident.[112] Florida and New Jersey are seeking to punish witnesses who fail to report violent crimes against children or adults.[113] The Florida bill "would make it illegal to witness a violent crime and not report it."[114] New Jersey seeks the same result as Florida, with the addition that the witness must report it "'as soon as reasonably practicable.'"[115]

New Jersey plans to impose a penalty of up to 18 months or $10,000.00, or both.[116] All expect to include the caveat that no person need put him or her self in danger to help another. New Jersey, in particular, hopes to be able to use the law to prosecute so-called "passive participants" – companions of criminals who witness violent crimes but do nothing to stop them, escaping criminal liability because they took no affirmative action to facilitate or conceal the crime.[117] Some New Jersey lawmakers have dubbed this bill the "Seinfeld Bill".[118]

A federal bill has also been introduced, which, like the California and Nevada proposed laws, focuses on crimes against children.[119] The bill, proposed by U.S. Senators Barbara Boxer of California and Nick Lampson of Texas would eliminate funding for child abuse prevention programs to states that did not enact laws requiring witnesses of crimes against children to report the crimes.[120] This bill, however, has

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[111] *See id.*

[112] *See* Caren Benjamin, *Lawyers Say Care Needed in Writing Good Samaritan Law*, LAS VEGAS REVIEW-JOURNAL, Sept. 13, 1998, at 1B.

[113] *See* Karp, *supra* note 10. *See also* Stainton, *supra* note 1.

[114] *See* Karp, *supra* note 10.

[115] *See* Mike Kelly, *Of Seinfeld and Sherrice*, THE RECORD (Bergen County, NJ), Oct. 8, 1998, at A03.

[116] *See id.*

[117] *See id.*

[118] *See id.*

[119] *See* Finz, *supra* note 8.

[120] *See id.*

received some criticism because it focuses only on crimes that victimize children and does not include adults.[121]

IV. RESOLUTION OF THE AMERICAN DEBATE OVER DUTY TO ACT LAWS

A. The Debate For and Against Duty to Act Laws.

The debate over imposing an affirmative duty to act has gone on in the American legal community for over eighty years.[122] Both sides have presented lengthy and persuasive legal and social arguments, but the public currently seems to be supporting the enactment of "good samaritan" statutes.[123] One of the strongest sentiments expressed by proponents of "good samaritan" laws is that such laws will provide needed retribution against egregious violators of the law.[124] Another point argued by supporters is that our legal system consistently reflects accepted morality, and, despite the fact that most laws prohibit certain acts, "good samaritan" laws are simply a reflection of our own morality, but happen to require us to act in certain ways when confronted with limited circumstances.[125] But the most distressing argument is that, while our own morality dictates that we should help others in need, people simply do not do so; therefore, we must legislate to educate and remind people of our societal and moral obligations to each other.[126] It is this goal that most supporters of "good samaritan" laws hope to achieve.

Opponents of these laws often argue that they will lead to vigilantism,[127] restrict personal liberty by dictating what action we must take in emergency situations, thereby limiting the choices we make,[128] or that the statutes will be selectively enforced.[129] What the opponents fail to consider, however, is the benefit to be gained by society through

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[121] *See* Beverly Pekala, *When We Save Others, We Save Ourselves*, CHI. TRIB., Sept. 27, 1998, at 9.

[122] *See* Adler, *supra* note 3, at 867.

[123] *See generally id.*

[124] *See* Samuel Freeman, *Symposium: Act & Crime: Act & Omission: Criminal Liability and the Duty to Aid the Distressed*, 142 U. PENN. L. REV. 1455, 1457 (1994).

[125] *See generally id.* at 1483.

[126] *See* Larini, *supra* note 6.

[127] *See* Wenick, *supra* note 6, at 1787-88.

[128] *See* Freeman, *supra* note 124, at 1478-79.

[129] *See* Wenick, *supra* note 6, at 1804-05. Selective enforcement is problematic only if a defendant "successfully proves that: 1) others similarly situated were not subjected to enforcement, and 2) the selection of the defendant was based on invidious discrimination (race or religion) or in retaliation for the exercise of constitutional rights." *Id.* at 1805.

as compared to the Florida statute, seems overly broad and sweeping in its language.[92] While it attempts to impose an affirmative obligation to report crimes, it would likely be difficult to convict an offender because of the inexact language used.[93] This law also limits its application unnecessarily by requiring individuals only to report crimes that they know occurred.[94] This leaves it open to debate as to what kind of knowledge must be obtained; need it be first-hand knowledge? While the statute also requires that a person be at the scene of the crime, it does not specify that the person need witness the crime.[95] This statute is problematic in that it does not clearly define the offense. Not surprisingly, there have been no convictions for violations of this law.[96]

7. Washington

Washington imposes an affirmative duty on witnesses of crimes against children or violent offenses to report the crime as soon as possible to authorities or medical professionals.[97] It places limits on the duty when reporting information would violate privileged communications or put the reporter or his or her family in danger of immediate physical harm.[98] The Washington statute is interesting in that it requires reporting knowledge of preparations for violent crimes or crimes against children, not just knowledge of a crime already committed.[99]

8. Ohio

Ohio expands its reporting requirement to encompass all felonies.[100] The Ohio statute also requires reporting discovery of a corpse or first-hand knowledge of a death.[101] It does not, however, impose any duty to assist the victims of the crimes.[102] While the Ohio law does not require disclosure of privileged information, it does, interestingly, absolve persons reporting privileged information regarding felonies from liability

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[92] *See id.*
[93] *See id.*
[94] *See id.*
[95] *See id.*
[96] *See* Larini, *supra* note 6.
[97] *See* WASH. REV. CODE ANN. § 9.69.100 (West 1998).
[98] *See id.*
[99] *See id.*
[100] *See* OHIO REV. CODE ANN. § 2921.22 (Banks-Baldwin 1998). The statute reads in relevant part: "(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities." *Id.*
[101] *See id.* at § 2921.22 (C).
[102] *See generally id.*

associated with violation of the confidence.[103] The law does not, however, and cannot relieve an attorney of ethical obligations pertaining to confidential communications when the communications concern a crime already committed.[104]

9. Colorado

Colorado attempted to create a statutory duty to report a crime when there exist reasonable grounds to believe a crime has been committed.[105] The effect of the statute was undermined, however, by *U.S. v. Zimmerman*,[106] in which the United States District Court ruled that the Colorado law did not create an affirmative duty on the part of witnesses to report crimes.[107] In *Zimmerman*, however, the government was arguing that an attorney had an obligation under the statute to disclose information within his knowledge regarding a crime.[108] The court's decision regarding the reporting statute focused greatly on whether a state could force a person to disclose information otherwise protected by privilege, here the attorney-client privilege.[109] The court answered the question with a resounding no, but perhaps too broadly, as the opinion clearly states that the statute does not impose a duty on a witness to stop or report the crime without qualifying it in the context of confidential communications.[110] Thus, the Colorado statute

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[103] *See* § 2921.22 (H).

[104] *See* Model Rules of Professional Conduct, Rule 1.6 (1998).

[105] *See* COLO. REV. STAT. ANN. § 18-8-115 (West 1998).

Duty to report a crime – liability for disclosure

It is the duty of every corporation or person who has reasonable grounds to believe that a crime has been committed to report promptly the suspected crime to law enforcement authorities. Notwithstanding any other provision of the law to the contrary, a corporation or person may disclose information concerning a suspected crime to other persons or corporations for the purpose of giving notice of the possibility that other such criminal conduct may be attempted which may affect the persons or corporations notified. When acting in good faith, such corporation or person shall be immune from any civil liability for such reporting or disclosure. This duty shall exist notwithstanding any other provision of the law to the contrary; except that this section shall not require disclosure of any communication privileged by law.

Id.

[106] 943 F.2d 1204 (10th Cir. 1991).

[107] *See id.* at 1214.

[108] *See id.* at 1205.

[109] *See id.*

[110] *See id.* at 1214.

such laws. They also fail to consider other laws that also restrict our individual choices, such as property rights, trespassing laws,[130] and blue laws that prohibit purchasing alcohol at certain times or on certain days.

B. Specific Cases of Witness Apathy

While the instances of witnesses failing to aid an injured victim are innumerable, a few examples stand out as particularly egregious. For example, the Sherrice Iverson case grabbed national attention,[131] possibly becoming the most significant catalyst for public support of duty to act laws since the Kitty Genovese incident in 1964.[132] On May 25, 1997, twenty-year-old Jeremy Strohmeyer followed seven-year-old Sherrice around a Las Vegas casino while her father was gambling.[133] Strohmeyer played hide and seek with Sherrice, eventually following her into the ladies' bathroom at about 4 a.m..[134] It was there that Strohmeyer proceeded to rape and murder the little girl.[135] Strohmeyer's friend, David Cash, was with him at the casino that night.[136] Cash saw Strohmeyer follow the girl into the bathroom, and even followed him in later, only to see Strohmeyer struggling with the girl in a stall in the bathroom, attempting to subdue her.[137] Cash returned every few minutes to check on his friend; Strohmeyer later told Cash that he had killed the girl.[138] Cash did not report this to anyone.[139]

Strohmeyer subsequently pled guilty to the charges in order to escape the death penalty.[140] Cash, on the other hand, was not charged with any crime since he did not take any affirmative action to cover up the crime.[141] Cash has made public statements indicating that he feels no remorse, that he worries about himself first, and that all of the

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[130] *See* Freeman, *supra* note 124, at 1478.

[131] *See e.g.* Editorial, *Girl Needed "Good Samaritan," Got Man Who Turned His Back*, SUN-SENTINEL (Ft. Lauderdale), Sept. 14, 1998, at 18A.

[132] *See* N.Y. TIMES, Mar. 27, 1964, at A1. Kitty Genovese was a young woman who was brutally attacked and stabbed to death on her own street. *See id.* Thirty-eight of her neighbors watched the attack over thirty-five minutes, yet not one of them called the police until after the attack had ended, and even then, only one person reported the incident to police. *See id.* This is possibly the most infamous failure to act case in the United States, although the Sherrice Iverson incident is gaining.

[133] *See* Pekala, *supra* note 121.

[134] *See id.*

[135] *See id.*

[136] *See id.*

[137] *See id.*

[138] *See id.*

[139] *See* Pekala, *supra* note 121.

[140] *See id.*

[141] *See id.*

media attention has helped him get dates.[142] The public has become incensed at his blatant disregard for human life, and many seek to institute "good samaritan" laws so that crime witnesses such as Cash can be punished, and so that the families of Sherrice Iverson can seek retribution against those who had an opportunity to stop the crime.

There are countless other stories besides the Sherrice Iverson tale. One man recalls seeing the body of a child alongside a Florida canal and another man standing near the body.[143] The other man stated that he was a good swimmer, but he let the boy drown; in fact, he had looked over his shoulder to make sure nobody saw the boy drowning.[144] He said he did it because he hated all whites, even children, because of how he had been treated.[145] A thirteen-year-old girl was tied to a pole and fondled on a crowded public train in Boston while ten of her fellow students watched and giggled.[146] None of the adults acknowledged the attack, no reports were made.[147] That same week, an eight-year-old boy found his mother dead in her bedroom and wandered to a nearby halfway house in his underwear for help.[148] While the residents called the police, nobody attempted to find out what had happened, or to take the boy home, despite his statement that "something is wrong with my mommy."[149]

And who can forget the tragic death of Princess Diana, when, after the car she was traveling in crashed, photographers swarmed about, taking the last snapshots of the dying princess?[150] It was this incident which first brought duty to act laws to the attention of the American public.

C. *Suggestions for a Model Statute*

The ideal "good samaritan" law should be as clear, specific, and detailed as possible to ensure its use. In order to develop an adequate statute, one should look to the American and European examples, incorporating the important elements of each to draw a statute that best serves American interests and needs, and that serves the purposes of "good samaritan" laws. Like the European models, the ideal statute should require that a

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[142] *See* Editorial, *supra* note 131.

[143] *See* Martin Dyckman, *Standing By Can Be a Crime*, ST. PETERSBURG TIMES (FL), Sept. 6, 1998, at 3D.

[144] *See id.*

[145] *See id.*

[146] *See* Beth Daley, *T Attack latest Case to Test Public Role: Some Say Fear, Not Apathy, Keeps Us from Intervening in Violent Crimes*, BOSTON GLOBE, Oct. 20, 1998, at B5.

[147] *See id.*

[148] *See id.*

[149] *See id.*

[150] *See* Gregory Katz, *Diana's Driver Believed Drunk; Alcohol Levels High, Officials Say*, DALLAS MORNING NEWS, Sept. 2, 1997, at 1A.

victim be in imminent or perceived imminent danger of physical harm.[151] The statute should encompass all emergency situations that could pose a risk to another person, rather than be limited to just criminal acts. An objective standard should be applied to the potential defendant, requiring a showing that the defendant knew or should have known that the victim was in danger. Some European statutes require that the defendant did know, thus applying a subjective standard. As in negligence law, application of a subjective standard precludes certainty in the judicial rule, and would likely encourage a defendant to lie about his or her state of mind. An objective, reasonable person standard should therefore be applied to the defendant.

The "good samaritan" should definitely be absolved of civil liability for any harm inflicted while engaging in reasonable efforts to help or assist a victim, much as medical professionals are today. Additionally, "good samaritans" acting in good faith should be reimbursed for any injuries or damages incurred while providing assistance efforts. Ideally, a state fund should be established through collection of fees from a criminal restitution project to cover these costs.

There should also be defenses available and enumerated in the statute itself. If it is apparent (again, apply a reasonable person standard to determine this) that effective assistance is being provided by others, then a would-be "good samaritan" should be absolved of liability. Liability should also be excused when an actor would put him or her self in danger or at risk of harm by rendering assistance to the victim. When a person already owes an important duty to another and when that other person is also in danger, liability should also be precluded, lest individuals feel obligated to overlook important special relationships in order to avoid criminal liability.

The ideal statute should include a reporting requirement. This requirement must be construed especially narrowly, or be subject to the same downfall as the Colorado statute.[152] It must be clear that mandatory reporting does not override confidentiality considerations when privileges exist at law.

Finally, to obtain the results desired by the public that advocates in favor of "good samaritan" laws, the ideal statute should include penalties that are in accord with the *mens rea* and the level of participation in infliction of the injury. For example, if a defendant witnesses a terrible accident, sees numerous people surrounding the victim, and assumes, incorrectly, that somebody is providing assistance, then the penalty imposed should be minor, if any at all. If, however, as in the Sherrice Iverson case, a defendant sees the crime being committed, knows what is going on, has ample opportunity and time to summon help or physically intervene (subject to the putting oneself at risk defense), then that defendant should be punished more severely. The recommended maximum sentence would be five years imprisonment, as borrowed from the French statute, and a fine of up to $10,000.00.

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[151] *See supra* notes 20-43 and accompanying text.

[152] *See* COLO. REV. STAT. ANN. § 18-8-115. *See also supra* notes 105-111 and accompanying text.

V. CONCLUSION

The arguments against adopting "good samaritan" laws are weak, and even the stronger points are easy to circumvent. A narrowly constructed law will hold accountable those who fail to render assistance when it would cost nothing for them to do so. The fact that few people will be prosecuted for violating these laws does not alone provide a valid reason against adopting duty to act laws, as many laws currently in place go unenforced except for the most egregious cases. Drunk driving, seat belt, and perjury laws are just a few examples of statutes that raise awareness but provide few convictions.

Imposing an obligation to act does little to restrict the freedom of individuals, but rather encourages active participation in our society. Those individuals who have no morality and do not wish to participate in society are the ones who will be most likely to violate duty to act laws, and those individuals should be penalized. Too many cases of onlooker apathy demonstrate that this country needs to enact "good samaritan" statutes to encourage and remind people to do what they ought to feel obligated to do. Kitty Genovese, Sherrice Iverson, Princess Diana, they all could have been saved if the witnesses to the crimes against them had taken immediate action. Few can argue that it is immoral to help another, therefore, legislators should ensure that our laws accurately reflect our morality. And if just one victim benefits from a "good samaritan" law, then it can be nothing but a good idea.

Mitchner, Shirley (Treasury)

From: Shirley Mitchner <shirleymf@ymail.com>
Sent: Sunday, March 01, 2015 9:21 PM
To: Mitchner, Shirley (Treasury); Shirley Mitchner
Subject: duty to act

Duty to Act laws often emerges from cases of individuals standing by while others are injured. Vermont was one of the first states to pass a Duty to Act legislation and has one of the most clear and specific statutes. Vermont statute 519(a) states:
A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.
The law goes on to say that a person who provides reasonable assistance as listed above shall not be liable for civil damages unless his acts constitute gross negligence or unless he will receive, or expects to receive, remuneration.
Minnesota has very similar legislation to Vermont. Each state has embedded Duty to Act into the state's Good Samaritan statutes. These statutes seem to be very clear. However, it will be up to a court to determine the details and application of the statute based on the situation. There have been numerous "duty to act/failure to act" cases that have reached our courts. Many times, courts have ruled that there is no duty to act unless a duty is created by statute or by actions of the agency or personnel, which creates a duty.

Some untrained citizens fall under "duty to act" or "duty to rescue" laws. For instance, in most industrialized nations, spouses have a duty to attempt to rescue each other – including all fifty states of the U.S. Travel industry personnel have a duty to assist their patrons in emergencies. Parents also have a duty to rescue and assist minor children including "in loco parentis" caregivers like school teachers and babysitters.
U.S. common law dictates that there is no general duty to act in an emergency, however, at least eight states have enacted laws requiring citizens to assist strangers in peril. These states include Florida, Ohio, Massachusetts, Rode Island and Vermont. You can be charged with a misdemeanor for not responding to someone in danger. Citizens are never required to place themselves in peril. This allows for so much subjectivity that the laws are generally ignored by law makers and citizens.

European countries tend to have more strongly worded citizen duty to act laws stating that anyone who reasonably capable is responsible for rendering aid to another in peril so long as it does not place them in harms way.
- See more at: http://theemtspot.com/2009/06/23/what-is-the-duty-to-act/#sthash.IX6llmc5.dpuf

Next time you happen upon an accident scene or hear a plea for emergency medical assistance, do unto others as you would have them do unto you, and be confident that your best effort will be good enough

http://www.nesl.edu/userfiles/file/nejicl/vol6/hayden.pdf

http://www.nesl.edu/userfiles/file/nejicl/vol6/hayden.pdf

Brandon Mitchner is the youngest of six children. He lived at home and worked at Menards, he took great pride in his work to always do his best. He graduated from Grand Ledge High School in 2010 and Lansing Community College in 2014 with an Associate's Degree in Marketing. Brandon is an analytical person, he evaluates everything. He spoke the truth to everyone, he didn't sugar coat his words. He would simply state the facts. He was a young man with an old mans' soul, like he had been here before. Brandon was a part of triplets but two died and Brandon survived. Brandon would say, one of them took his height, one took his studios, but he got the good lucks and tenacity. Brandon loved life to the fullest. He love inspirational poems/words. He had a great personality, very friendly and respectable to all. His friends would come to him for advice. He even would give advice to his siblings. He is admired by his, family, friends and co-workers. He is a very sensitive young man. He had the most beautiful, contagious smile that could melt a person. Brandon loved life, his family, friends, and basketball. He could tell some of the funniest jokes. He loved to work out and lift weights to create his six pack abs. He was a protector, a goal setter, a loyal friend, hard worker and a very talented young man. He started his own business a year ago and had his own logo. **M.I.Y.M. = Make It Your Mission**, to do the right thing. He was selling, baseball shirts, leggings, t-shirts and sweatshirts. Who knew what this business could have become with Brandon's talent. Brandon wanted to see his business in all major stores around the United States. Brandon was very proud of the tattoo he created (lion head) which was on his chest and went down his arm. Brandon dresses very well, his outfits matches his shoes. He once asked his mother to buy him a pair of gym shoes, she said no problem, Brandon created those gym shoes. They are a one of a kind shoe. The gym shoes are black and white and costs his mother $160.00. I purchased Brandon his toiletries and cologne. Onetime I bought some suave liquid soap and he advised me that he could only wear ~~his~~ name brand stuff because off brands broke him out. I as a mother immediately rushed out and purchased the correct brand.

Brandon and I had Friday date nights, we would watch a movie, eat popcorn and I of course would fall asleep. Those dates last a long time until the girls came into play. Because he wasn't much of hanging out and definitely not a partier, I still got to spend time with time, because he was a home body. Brandon had a very special relationship with all of his siblings, he would go to his oldest sisters house Bianca for dinner when he had classes, and believe me she would make what her brother wanted to eat. Brandon and Steve Jr., played video games all the time. Brandon and Brianna were the last two left at home, they knew each other's personality very well. They were best friends. Rodney and RaShawn both had special talks to each and Brandon would bounce things off of Rodney and Steven Jr.

Brandon and his dad had those special man to young man talks. He is the love of his parents life. Brandon would call his mom or e-mail her everyday to ask her is there anything she would like for him to do for her. He always checked in to let her know if he was staying at a friends or not.

On June 28, 2014 Brandon's life was cut short. He was celebrating his friends 21st birthday on a party bus. After the partying he and an associate were walking down Washington Street and ended up on a dead end street and Brandon ended up drowning in the river. The young man that was with him, knew that Brandon had fell in the river and he tried to get him but because it was slippery he got back up, got on his cellphone and called I-Cab to take him to a friend's house and 9 hours later they woke up and were calling around looking for Brandon. The young man knew where Brandon was. The young man

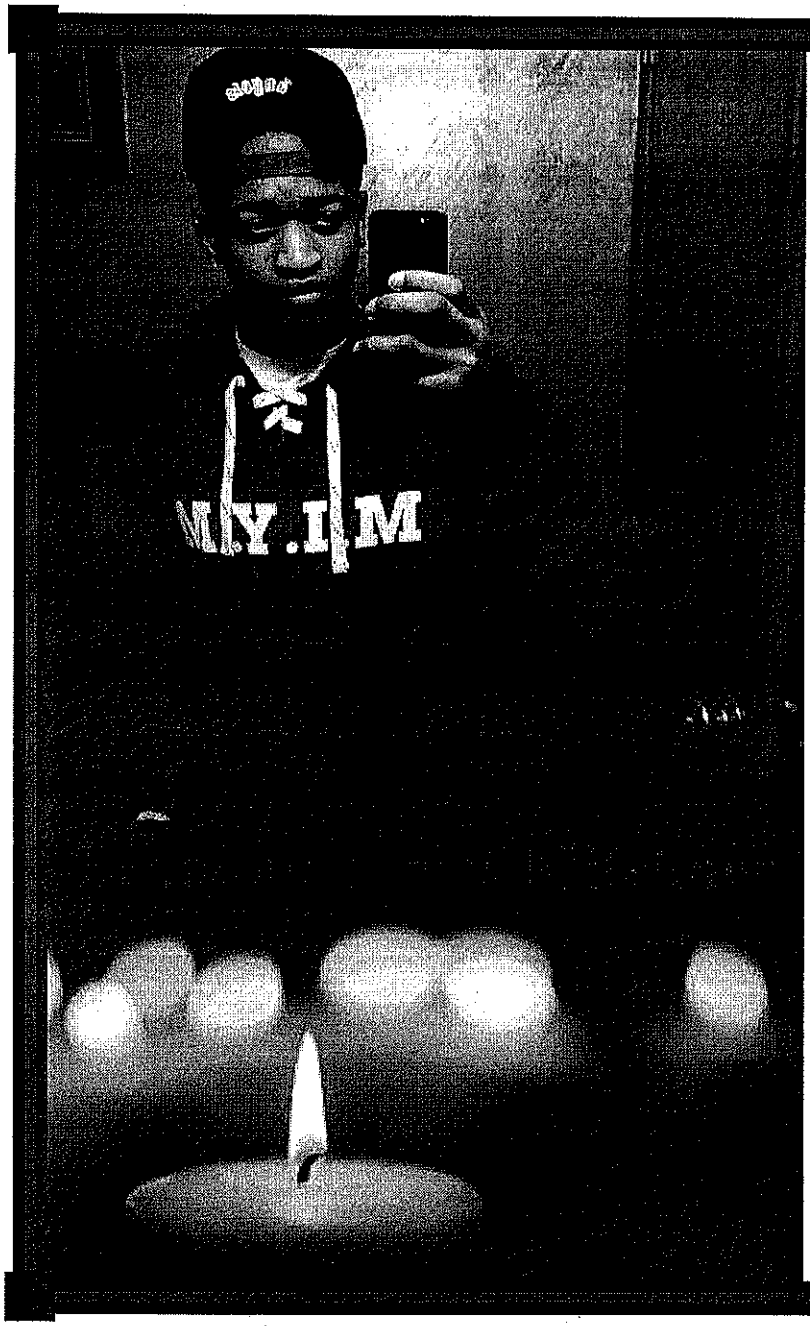
Hello,

My name is Shirley Mitchner, I work in the Individual Income Tax Return Division. On Friday, October 24, 2014 a Peaceful Candlelight Vigil was held in downtown Lansing at the capitol building in honor of Brandon Mitchner to gain support for this bill "Duty to Act" and let people be aware of what happened to Brandon could happen to anyone, (grandchild, you, siblings, friends etc.) if the person they are with are not held accountable by seeking help. Please spread the word to friends, family, co-workers, and to the legislative.

On June 28, 2014 my son Brandon Mitchner life was cut short. He was celebrating his friends 21st birthday. Brandon went missing. He and an associate were walking down Washington Street and ended up on a dead end street and Brandon ended up drowning in the river.

The young man that was with him, knew that Brandon had fell in the river and he tried to get him but because it was slippery he got back up, got on his cellphone and called I-Cab to take him to a friend's house and 9 hours later they woke up and were calling around looking for Brandon. The young man knew where Brandon was. The young man didn't scream, yell, seek any kind of help, call 911, and knock on doors. Brandon was 22 years old, lived at home, just finished receiving his associate's degree in Marketing from Lansing Community College and in the fall would pursue obtaining his bachelor's degree. He had started his online clothing line with his own logo M.I.Y.M. = Make it Your Mission.

We are trying to create legislation where if you are with another person and you see that they ~~are~~ in danger, hurt, sick, they must seek help. They do not have to do anything that would endanger them self. But they cannot walk away and act like nothing happened. There are only eight states that have this law. It is a shame that you have to get a law passed to make people do the right thing.



Peaceful Candlelight Vigil & Walk
Make It Your Mission
to do the RIGHT thing!!!

In memory of Brandon Mitchner and to bring awareness to the need to pass a "Duty to Act" law in Michigan, we are holding a peaceful Candle Light Vigil on Friday, October 24, 2014, at 6:00 p.m., downtown Lansing in front of Grand Traverse Pie Company , 200 South Washington, Lansing, Michigan.

On June 28, 2014, Brandon's life was cut short. He was celebrating his friend's 21st Birthday. He and an acquaintance were walking down South Washington Street and ended up on a dead end street where Brandon fell into the river and drowned. The young man that was with him did not summon help or call 911 until 9 hours after the incident.

Our hope and prayers are to bring awareness to the lack of such law in Michigan and to gain support to pass a "Duty to Act" law that requires a party to take necessary action to prevent injury or harm to another person.

It will require individuals to seek help when a person is in danger, hurt, or sick. Currently, there are only seven states that have this law. We have contacted House Representative Teresa Abed, who is looking into this matter.

Please join the Mitchner Family at the Candle Light Vigil to honor

Brandon's memories and to have a law enacted so that another person will not lose his or her life and another family and friends will not have to suffer.