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Statutes Establishing a Duty to Report Crimes or Render Assistance to Strangers: Making Apathy Criminal

INTRODUCTION

Should there be a duty for individuals to come to the rescue of strangers in peril? This question is beset by complex and wide ranging problems. The issue of whether a good citizen must also be a "good Samaritan" is of significance to a broad scope of disciplines including philosophers, sociologists, and theologians. The term "rescue" is used in this Note in a broad sense, and includes informing officials of a victim's plight, warning the victim, actual physical intervention, and other action appropriate in the circumstances. "Rescue" is defined as an "[a]ct of freeing or saving," BLACK'S LAW DICTIONARY 1175 (rev. 5th ed. 1979); the "act of rescuing (especially persons) from enemies, saving from danger or destruction... succor, deliverance... To deliver or save (a person or thing) from some evil or harm."

The term "good Samaritan" comes from the parable of the Samaritan told by Jesus:

A certain man went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead.

And by chance there came down a certain priest that way; and when he saw him, he passed by on the other side.

And likewise a Levite, when he was at the place, came and looked on him, and passed by on the other side.

But a certain Samaritan, as he journeyed, came where he was; and when he saw him he had compassion on him,

And went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him.

And on the morrow, when he departed, he took out two pence, and gave them to the host, and said unto him, "Take care of him; and whatsoever thou spendest more, when I come again, I will repay thee."

Which now of these three, thinkest thou, was neighbor unto him that fell among thieves?

And he said, "He that showed mercy on him." Then said Jesus unto him, "Go, and do thou likewise."

Luke 10:30-37 (King James).

For a discussion of the philosophical foundations of a duty to rescue, see...
The question has been a matter of controversy for centuries because it relates to the fundamental role of the individual in society.  


See Franklin, *Vermont Requires Rescue: A Comment*, 25 Stan. L. Rev. 51 (1972) ("The lack of such an obligation [to rescue others] is attributed generally to a regard in the common law for individual freedom and personal responsibility.");
This Note explores the problem of what can be done by state statutes to impose a legal duty on persons to aid others. Recently, several states have enacted, or have considered enacting, legislation requiring citizens to render some form of assistance to persons in danger. Kentucky has not introduced any such legislation at the present time. This Note deals with the concerns that would face Kentucky legislators in deciding whether such statutory action is appropriate. First, the existing common law on the subject will be discussed. This involves a study of both criminal and tort law, because failure to rescue may violate both public and private duties. Next, legislation requiring persons to report crimes is analyzed. In this context, the Note explores the drafting of such statutes and concurrent constitutional problems. Finally, statutes establishing a duty to give assistance to others in jeopardy will be examined. The Note addresses the circumstances which give rise to a legal duty to act, and discusses whether civil or criminal liability should be imposed for a failure to act. The effectiveness of these statutes and the underlying policy considerations are also considered. In conclusion, model statutes are presented.

I. COMMON LAW ON DUTY TO RESCUE

The undisputed general rule under both the criminal law and tort law is that there is absolutely no duty to rescue a stranger. This principle has been the subject of scholarly attack, but it remains firmly entrenched in American law.

Kirchheimer, Criminal Omissions, 55 Harv. L. Rev. 615, 641 (1942) (“A narrow conception of the duty to assist others has been regarded as the expression of an individualistic order of society.”).

Telephone interview with Norman Lawson of the Kentucky Legislative Research Council (Oct. 19, 1983).

See Model Penal Code § 2.01(3) (Proposed Official Draft 1962) (providing: “Liability for the commission of an offense may not be based on an omission unaccompanied by action unless: (a) the omission is expressly made sufficient by the law defining the offense; or (b) a duty to perform the omitted act is otherwise imposed by law.”)

See Restatement (Second) of Torts § 314 (1977): “The fact that the actor realizes or should realize that action on his part is necessary for another’s aid or protection does not of itself impose upon him a duty to take such action.”

See, e.g., B. Cardozo, The Paradoxes of Legal Science (1928); Ames, supra
A. Criminal Law

A criminal omission\textsuperscript{14} can be defined as a failure to act where there is a legal duty to act.\textsuperscript{15} It is axiomatic that a moral obligation alone is insufficient to impose a legal duty.\textsuperscript{16} In the classic case of Jones v. United States,\textsuperscript{17} the court found at least four categories where the failure to act breaches a legal duty.\textsuperscript{18} First, there is a duty where it is established by statute.\textsuperscript{19} Second, the existence of a duty can be based on certain status relationships.\textsuperscript{20} Illustrative of relationships giving rise to such a duty are: parent and child,\textsuperscript{21} husband and wife,\textsuperscript{22} ship captain and passenger,\textsuperscript{23} and employer and employee.\textsuperscript{24}

\textsuperscript{14} For an excellent general discussion of the law of criminal omissions see Williams, CRIMINAL LAW: THE GENERAL PART §§ 3-4 (2d ed. 1961); Frankel, Criminal Omissions: A Legal Microcosm, 11 WAYNE L. REV. 367 (1965); Glazebrook, Criminal Omissions: The Duty Requirement in Offences Against the Person, 76 L. Q. REV. 386 (1960); Hughes, Criminal Omissions, 67 YALE L.J. 590 (1958); Kirchheimer, Criminal Omissions, supra note 9, at 615; Perkins, Negative Acts in Criminal Law, 22 IOWA L. REV. 659 (1937); Snyder, Liability for Negative Conduct, 35 VA. L. REV. 446 (1949).

\textsuperscript{15} 2 WHARTON'S CRIMINAL LAW § 172 (14th ed. 1979 & 1983 Supp.). See Hughes, supra note 14, at 597-99 ("'Act' must be defined before an omission can be distinguished; and no agreed juristic concept of an act exists."); Perkins, supra note 14, at 666 (categorizes omissions as negative acts: "An act is (1, positive) an occurrence which is an exertion of the will manifested in the external world, or (2, negative) a non-occurrence which involves a breach of a legal duty to take positive action.").

\textsuperscript{16} W. LAFAVE & A. SCOTT, CRIMINAL LAW, § 26 (1972).

\textsuperscript{17} 308 F.2d 307 (D.C. Cir. 1962).

\textsuperscript{18} See id. at 310.

\textsuperscript{19} Id.

\textsuperscript{20} For a thorough discussion of the relationships giving rise to a duty to act, see Kirchheimer, supra note 9, at 621-36.

\textsuperscript{21} See, e.g., Palmer v. State, 164 A.2d 467 (Md. 1960) (mother guilty of homicide for failing to prevent beating of her baby by her lover); Commonwealth v. Breth, 44 Pa. C. 56 (1915) (parents guilty of homicide for failure to call a doctor for their ill child).

\textsuperscript{22} See, e.g., State v. Smith, 65 Me. 257 (1876) (husband who failed to supply shelter to his wife was found guilty of manslaughter); Territory v. Manton, 19 P. 387 (Mont. 1888) (husband who left wife out in snow was found guilty of manslaughter when she froze to death). But see People v. Beardsley, 113 N.W. 1128 (Mich. 1907) (man owes no duty to provide a doctor for his mistress).

\textsuperscript{23} See generally Annot., 91 A.L.R.2d 1032 (1963).

\textsuperscript{24} For a collection of cases see W. LAFAVE & A. SCOTT, supra note 16, at 184 n.8.
In the third type of situation, a responsibility to care for others may be assumed under contract. Finally, a legal obligation may develop from a voluntary assumption of care.

The historical reluctance of the criminal law to recognize a general duty of rescue is often attributed to the difficulty in defining what inaction is prohibited and to a strong individualistic attitude. Once a legal duty to act has been established, a failure to discharge that obligation which results in the death of the person to whom the duty was owed constitutes murder or manslaughter, depending on the circum-

25 See, e.g., Cowley v. People, 83 N.Y. 464 (1880) (manager of children's home convicted of willfully causing health of a child in his care to be endangered). For a collection of other cases see Frankel, supra note 14, at 404 n.122.

26 See, e.g., Cornell v. State, 32 So. 2d 610 (Fla. 1947) (grandmother found guilty of manslaughter when she undertook care of grandchild and let it smother to death); Stehr v. State, 139 N.W. 676 (Neb. 1913) (stepfather guilty of manslaughter for failure to summon a doctor for his stepchild). For a discussion of this principle under tort law, see note 49 infra and accompanying text.

27 Four factors shaped the law of culpable omissions:
(1) judicial reluctance to extend the criminal law into new areas, (2) legislative and judicial conceptual difficulty in attributing harms to nonaction, (3) a resulting tendency to inculpate only those omissions where the emitter's role or status created peculiarly strong expectations that he would act and (4) the inculpation of omissions only in the face of great and pressing public need.

Frankel, supra note 14, at 375.

Lord Macaulay, one of the more important influences on the law of criminal omissions, stated: "We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstance which marks them out as peculiarly fit objects of penal legislation." L. Macaulay, Notes on the Indian Penal Code, in 7 Lord Macaulay's Works 221, 319-20 (Trevelyan ed. 1873), quoted in Hall, General Principles of Criminal Law 190-92 (2d ed. 1960). For discussions on the historical development of the law of criminal omissions, see generally Glazebrook, supra note 14, at 388-410; Hughes, supra note 14, at 590-97.

28 Perkins, supra note 14, at 669. To illustrate the difficulty of definition, Perkins cites the example of a baby who starves to death because no one in the United States feeds him. Id.

29 The trend under both the criminal and tort law is to broaden the scope of instances where a duty is imposed. See W. LaFave & A. Scott, supra note 16, at 186. See also Kirchheimer, supra note 9, at 642 (narrow view of situations establishing duty to act "perhaps itself belongs to a period of the past").

30 See, e.g., Jones v. State, 43 N.E.2d 1017 (Ind. 1942) (defendant who intentionally failed to rescue girl who fell into a creek after he raped her held guilty of murder when she drowned).

31 See, e.g., Gibson v. Commonwealth, 50 S.W. 532 (Ky. 1899) (parent who failed to supply child with shelter held guilty of manslaughter when child died from expo-
stances.\textsuperscript{32} Although most of the cases on criminal omissions relate to homicide, the crime of arson may also be committed by a failure to act.\textsuperscript{33}

B. \textit{Tort Law}

The tort law on omissions\textsuperscript{34} is closely analogous to the rules developed under the criminal law.\textsuperscript{35} Even under the most egregious facts, courts have consistently held that there is no general duty of rescue.\textsuperscript{36} For example, in the often cited sure); Rex v. Russell, [1933] Vict. L.R. 59 (Austl. 1933) (father who watched wife drown their children held guilty of manslaughter). \textit{See also} the cases cited in notes 21-26 supra.

\textsuperscript{32} Whether the failure to act constitutes murder or manslaughter depends on the defendant's state of mind toward the result. See the discussion of the mens rea requirement for crimes of omission in W. LaFave \& A. Scott, supra note 16, at 190. For a general analysis of homicide offenses resulting from lack of performance of a duty of care, see Perkins, supra note 14, at 680-83.

\textsuperscript{33} See Commonwealth v. Cali, 141 N.E. 510 (Mass. 1923).


\textsuperscript{35} See, e.g., W. LaFave \& A. Scott, supra note 16, at 187 n.24 ("The civil cases are closely analogous to criminal cases.").

\textsuperscript{36} See, e.g., Allen v. Hixson, 36 S.E. 810 (Ga. 1900) (no liability when employer failed to aid employee who damaged hand in machinery); Hurley v. Eddingfield, 59 N.E. 1058 (Ind. 1901) (doctor not liable for refusing to aid a dying man); Osterlind v. Hill, 160 N.E. 301 (Mass. 1928) (boat concessionaire who rented a boat to an intoxicated man and watched him drown when the boat overturned was not liable); Sidwell v. McVey, 282 P.2d 756 (Okla. 1955) (no liability when one refrains from preventing neighbor's child from playing with explosives); Yania v. Bigan, 155 A.2d 343 (Pa. 1959) (no liability when defendant watched business visitor drown).

In discussing these cases, one commentator notes that the general rule of no duty to rescue has been applied by the courts when: "(1) the rescuer must physically intervene to prevent imminent harm to the victim; (2) the rescuer need only warn the victim to prevent harm; and (3) the rescuer must alleviate a dangerous condition to prevent harm to unknown potential victims." \textit{See Note, supra} note 1, at 146.
case of Buch v. Amory Manufacturing Co., a company that failed to keep a child from walking into a dangerous machine was found not liable. The court stated: "With purely moral obligations the law does not deal." The court suggested an example in which a person sees a two year old baby on the railroad tracks; he can easily save the infant with no risk of danger to himself, but he stands idly by and allows the child to be killed. In such a case, the person refusing to act "may, perhaps justly be styled a ruthless savage and a moral monster; but he is not liable in damages for the child's injury, or indictable under the statute for its death."

In discussing these and similar cases, Prosser concludes, "The remedy in such cases is left to the 'higher law' and the 'voice of conscience,' which in a wicked world, would seem to be singularly ineffective either to prevent the harm or to compensate the victim. Such decisions are revolting to any moral sense." The traditional justification given for the general rule precluding liability is the distinction under the tort law between misfeasance and nonfeasance.

For recent examples of failure to rescue see Rivera v. Randle E. Ambulance Serv., Inc., 393 So. 2d 605 (Fla. App. 1980) (ambulance attendants would not come to the aid of traffic victims); State v. Joyce, 433 A.2d 271 (Vt. 1981) (bystanders refused to aid crime victim).

Cf. Union Pac. Ry. v. Cappier, 72 P. 281 (Kan. 1903) (no liability where railroad employees failed to assist man run over by train).

See Union Pac. Ry. v. Cappier, 72 P. at 282 (penalties for failure to come to the aid of those in need "are found not in the laws of men, but in that higher law, the violation of which is condemned by the voice of conscience").

There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and nonfeasance, between active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant.

One commentator's reply to this distinction is that "[f]rom a philosophical point of view, it does not appear possible to distinguish between the man who does something and the man who allows something to be done, when he can interfere." Tunc, The Volunteer and The Good Samaritan, in The Good Samaritan and The Law 43,
As with the criminal law, courts have recognized exceptions to the general rule where certain special relationships create a duty to act. Although there may be no initial duty to act, if a person gratuitously attempts to render aid, or promises to do so, he is treated as though he voluntarily as-

45 (J. Ratcliffe ed. 1966).


One difference between tort law relationships giving rise to a duty to act and the relationships established under criminal law is that family immunities exist in tort law. In his analysis of special relationships, Prosser states:

Two that appear likely to receive early recognition are those of husband and wife, and parent and child, where the duty to aid has been established in the criminal law, and with the rapidly growing tendency to abrogate family immunities to suit may be expected to be taken over into tort cases.

W. PROSSER, supra note 43, at 342.

For an in depth examination of the various relationships which may result in liability, see Bohlen, supra note 7, at 226-44. See also RESTATEMENT (SECOND) OF TORTS, § 314A (1977) for a list of these special relationships.

46 In Rowland v. Christian, 443 P.2d 561 (Cal. 1968), the California Supreme Court announced a list of factors to be considered in determining whether a legal duty to third persons exists. These include:

the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.

Id. at 564. These factors were also cited by the court in Soldano v. O'Daniels, 190 Cal. Rptr. 310, 311 (Ct. App. 1983). For a discussion of Soldano see text accompanying notes 53-62 infra. See generally Green, The Duty Problem in Negligence Cases, 29 COLUM. L. REV. 255 (1929) (identifies the relevant factors as administrative, moral or ethical, economic, justice, preventative and precedential). Green's model is analyzed in Edgar, supra note 34, at 305-08.

47 See, e.g., Cincinnati, N.O. & T.P. R.R. v. Marrs' Adm'x, 85 S.W. 188 (Ky. 1905); Fagg's Adm'r v. Louisville & N. R.R., 63 S.W. 580 (Ky. 1901). RESTATEMENT (SECOND) OF TORTS § 314A(4) (1977) states: "One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a similar duty to the other."

MAKING APATHY CRIMINAL

In these circumstances, affirmative action places the person's conduct within the realm of misfeasance and therefore creates tort liability.

C. New Developments

Since the general rule precluding liability for failure to rescue others is so deeply rooted in the common law, the question arises as to the likelihood that courts will ever repudiate it on their own initiative. Prosser states that the decisions imposing liability for breach of a promise to render aid where there is detrimental reliance by the plaintiff "may possibly represent the overthrow of the traditional rule."

If any such progress in repealing the old common law rule is underway, it is taking place in the California courts. Recently the California Court of Appeals reached a landmark decision in Soldano v. O'Daniels. In that case, a man came into the defendant's business establishment, told the defendant's employee that a person was being threatened in a bar across

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49 As to this rule, Prosser notes, "The result of all this is that the good Samaritan who tries to help may find himself mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful way rejoicing." W. Prosser, supra note 43, at 344. See generally Gregory, Gratuitous Undertakings and the Duty of Care, 1 De Paul L. Rev. 30 (1951).

50 For citation to these decisions, see note 48 supra.

51 W. Prosser, supra note 43, at 346. In addition to such frontal assaults on the old rule, the common law has developed "techniques for encouraging would-be rescuers." Franklin, supra note 9, at 51. "These include a broad extension of liability toward injured rescuers, whether the defendant has been negligent toward those being rescued, or is held liable under a doctrine of strict liability. . . . Moreover, the law displays a strong unwillingness to find the rescuer to have been contributorily negligent." Id. (citations omitted).


53 190 Cal. Rptr. at 310.
the street, and requested use of the telephone to call the police. The employee denied the good Samaritan access to the telephone and refused to place a call himself. The plaintiff's decedent was killed in the bar as a result of the confrontation which the good Samaritan was attempting to report, and the plaintiff sued the business establishment for wrongful death.\textsuperscript{5}

The court held that the defendant's employee owed a duty to the plaintiff's decedent either to allow the good Samaritan to place a call to the police or to place the call himself.\textsuperscript{6}

The court recognized that under traditional analysis the existence of a duty would be denied, but refused to follow this approach. "Here there was no special relationship between the defendant and the deceased. . . . But this does not end the matter. It is time to re-examine the common law rule of nonliability for nonfeasance in the special circumstances of the instant case."\textsuperscript{7} The court emphasized that the old rule had been the subject of much criticism.\textsuperscript{8} Analyzing the duty question in terms of factors previously set forth by the California Supreme Court,\textsuperscript{9} the court concluded that harm to the decedent was foreseeable and certain, as there was a close connection between the employee's conduct and the injury.\textsuperscript{10} The employee's conduct was morally wrong, the burden on the employee was minimal, and finding a duty would promote the policy of harm prevention.\textsuperscript{11} In explaining the basis for its holding,\textsuperscript{12} the court stated:

The creative and regenerative power of the law has been strong enough to break chains imposed by outmoded former decisions. What the courts have power to create, they also

\textsuperscript{5} Id. at 311-12.
\textsuperscript{6} See id. at 317.
\textsuperscript{7} Id. at 314.
\textsuperscript{8} See id. at 313. The court noted that the California Supreme Court had termed a similar rule "morally questionable." Id. (citing Tarasoff v. Regents of Univ. of Cal., 551 P.2d at 334). For citations to scholarly criticism of such rules, see note 13 supra.
\textsuperscript{9} These factors are listed in note 46 supra.
\textsuperscript{10} 190 Cal. Rptr. at 315-16.
\textsuperscript{11} Id. at 316.
\textsuperscript{12} The court stated that the facts of the case almost came within the Restatement of Torts section relating to negligent prevention of aid by third parties, and relied on provisions of the Restatement throughout the opinion. Id. at 317. (citing \textsc{Restatement (Second) of Torts} § 327 (1979)).
have power to modify, reject and re-create in response to the needs of a dynamic society. The exercise of this power is an imperative function of the courts and is the strength of the common law.62

Although it would be unwise to be overly optimistic about the downfall of the general rule, the Soldano case is one of the most significant decisions in this regard to date. If other courts would be as willing to attack the issue outside the rigid framework of special relationships, emphasizing a customary tort analysis based on factors such as foreseeability, unconscionable decisions63 would be eliminated. The value of courts' imposing a duty of rescue, as opposed to state legislatures, is that courts can be more flexible.64 However, courts need some impetus to institute change.65 This impetus can be provided by state legislatures.

II. Crime Reporting Statutes

Even though there is no general duty to render assistance to others, criminal statutes contain a wide range of provisions punishing specific omissions. For example, "hit-and-run statutes [make] it a criminal offense for the driver of an automobile involved in an accident resulting in injury to leave the scene of the accident without [stopping], identifying himself and rendering needed assistance to the injured person."66 Un-

61 Id. at 318. However, the court cautiously stressed the limited nature of its holding. "It bears emphasizing that the duty in this case does not require that one must go to the aid of another. That is not the issue here. The employee was not the good samaritan [sic] intent on aiding another. The patron was." Id. at 317.
62 See notes 36-42 supra and accompanying text for reference to tort law cases with harsh results.
63 "The law of torts is anything but static, and the limits of its development are never set." W. Prosser, supra note 43, at 3.
64 See Bad Samaritan, supra note 34, at 639. "[J]udicial inertia is such that it is unreasonable to expect that the courts of their own volition will revise the law of rescue." Id. The author notes that if such a change were to take place it could be accomplished in two ways: "The courts can either disregard the misfeasance-nonfeasance distinction entirely and apply the rules of prima facie tort to the failure to rescue, or they can imply a special relationship between men solely because of their cohabitation in society." Id.
like the common law duty of reasonable care, "applicable only if the . . . accident was caused by the tortious conduct of the driver involved," the duty imposed by statute exists "regardless of whether the driver was legally responsible for the accident."

Most states also have statutes which require citizens to aid a police officer on request. Additionally, some provisions obligate persons in certain relationships to furnish care and necessities. Persons in certain occupations must conform to statutory duties. For example, physicians are under a duty to report cases of child abuse or gun shot wounds. Statutes provides:

The operator of any vehicle, whose vehicle . . . is involved in an accident resulting in injury to or death of any person or resulting only in damage to a vehicle . . . shall immediately stop . . . and render reasonable assistance, including the carrying, or making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment. . . .

KY. REV. STAT. § 189.580(1) (Bobbs-Merrill 1981) [hereinafter cited as KRS]. For citations to further statutes, see Gregory, supra note 34, at 29 n.18.

See Annot., supra note 66, at 300. See RESTATEMENT OF TORTS § 322 (1934): If the actor by his tortious conduct has caused such bodily harm to another as to make him helpless, the actor is under a duty to use reasonable care to prevent any further harm which the actor then realizes or should realize as threatening the other. Caveat: The Institute expresses no opinion as to the existence or nonexistence of a similar duty to aid or protect one whom the actor's non-tortious conduct has rendered helpless to aid or protect himself. This caveat was later deleted. See RESTATEMENT (SECOND) OF TORTS § 322 (1965). See generally Note, Nonnegligent Driver's Duty to Warn, 43 TENN. L. REV. 511 (1976) (discussing common law duty of motorist involved in an accident that leaves a hazard on the highway to take action to warn oncoming motorists).

See Annot., supra note 66, at 300-01.

See, e.g., ARIZ. REV. STAT. ANN. § 13-2403 (1978); DEL. CODE ANN. tit. 11, § 1241 (1974); ILL. ANN. STAT. ch. 38, § 31-8 (Smith-Hurd 1977). See generally Legislation Note, Criminal Law: Requiring Citizens to Aid a Police Officer, 14 DE PAUL L. REV. 159 (1964). Forty-six states have provisions requiring citizens to come to the aid of a police officer on his request; 42 states impose sanctions for failure to do so. Id. at 160-61. These penalties range from a nominal fine to as much as a $1,000 fine. Some states make refusal to assist a misdemeanor. See also Frankel, supra note 14, at 402-05 (crimes of omission are categorized).

For citations to some of these statutes, see Frankel, supra note 14, at 403, nn.108-09. See 2 WHARTON'S CRIMINAL LAW, supra note 15, at § 173 for a concise discussion and extensive citation to case law regarding the duty to provide food, clothing and shelter.

See Frankel, supra note 14, at 403. See, e.g., CAL. PENAL CODE §§ 11165-74 (West 1982 & Supp. 1982). KRS § 208B.030(1) provides that certain, specified health
may mandate reporting specific acts of misconduct, such as the attempt to influence jurors\textsuperscript{73} or an offer of a bribe to participants in sporting events.\textsuperscript{74} When such statutory duties are added to those that exist under the common law, it becomes clear that a mere statement of the general "no duty" rule is misleading. The real issue is what should be done about "persons placed by fortuity in emergency situations who fail to aid others in distress."\textsuperscript{75}

A. The Catalyst for Recent Legislative Action

Rhode Island recently enacted a crime reporting statute,\textsuperscript{76} and similar legislation has been introduced in Massachusetts,\textsuperscript{77} and Pennsylvania.\textsuperscript{78} All three legislative efforts basically state that any person who witnesses one of the specified crimes must notify the police that a crime has been committed.\textsuperscript{79}

practitioners, or any "other person, organization or agency who knows or has reasonable cause to believe that a child is an abused or neglected child, shall cause a report to be made in accordance with the provisions of this section." KRS § 208B.030(2)-(8) then sets forth detailed requirements as to the nature of the report and subsequent proceedings.

\textsuperscript{72} See OHIO REV. CODE ANN. § 2921.22 (Page 1982) [hereinafter cited as ORCA] (relating to duty to report gun shot or stab wounds and other injuries).

\textsuperscript{73} See CONN. GEN. STAT. ANN. § 53-145 (West 1960), which provides: "Any person having knowledge" of an attempt to improperly influence jurors "who does not at once give information thereof to the presiding judge of the court . . . or to some prosecuting officer, shall be fined not more than five hundred dollars or imprisoned not more than one year or both."

\textsuperscript{74} See ILL. ANN. STAT. ch. 38, § 29-3 (Smith-Hurd 1977) (any person connected with a sporting contest who fails to report the offer of a bribe is guilty of a class A misdemeanor).

The text accompanying notes 69-74 does not provide an exhaustive list of the situations where a person has the duty to act. See Frankel, supra note 14, at 403-04. Other examples include: the obligation of hotel owners to maintain fire equipment and the duty of pharmacists to keep a poison registry. For citation to such statutes, see id. at 403 nn.110-14.

\textsuperscript{75} Frankel, supra note 14, at 405. Frankel refers to this type of person as "the fortuitously villainous omitter." Id.

\textsuperscript{76} 1983 R.I. GEN. LAWS §§ 11-37-3.1 TO 11-37-3.4 [hereinafter cited as R.I.G.L.].


\textsuperscript{78} See Pa. H.B. 1114, 1983 Sess.

\textsuperscript{79} R.I.G.L. § 11-37-3.1 states:

Any person other than the victim, who knows or has reason to know that a first degree sexual assault is taking place in his/her presence shall
These crime reporting measures were introduced in direct response to a recent rape case in New Bedford, Massachusetts. According to reports, on March 6, 1983, a young woman was raped repeatedly in a bar by four men while at least fifteen other men stood by and watched; some applauded and cheered, but no one called the police. The mass indifference was verbalized by one, unidentified witness who stated: "Why should I care?"

immediately notify the state police department of the city or town in which said assault or attempted assault is taking place of said crime.

Mass. H.B. 5961, supra note 77, provides:

Whoever witnesses the commission of a felony punishable by death or life imprisonment and fails voluntarily to report said crime to the local police within twenty-four hours, shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars.

Pa. H.B. 1114, supra note 78, states that a person commits an offense if “[h]e fails to report to police, within 24 hours of its commission, a murder, rape, kidnapping, robbery or arson which he has observed being committed and which he knows during its commission, or learns within 24 hours of its commission, is a crime.”


There were accounts that the district attorney charged two “witnesses” in the case, but they “reportedly encouraged the attack and helped hold the woman on a pool table.” Press, Taylor & Clausen, The Duties of a Bystander, Newsweek, Mar. 28, 1983, at 101:79.

Sentencing of the defendants in the New Bedford rape case took place on March 26, 1984. Massachusetts Superior Court Justice William Young sentenced three of the defendants to maximum prison terms of 9 to 12 years. The fourth defendant convicted of aggravated rape received a six to eight year prison term. Two other men indicted in the case were acquitted upon evidence that they had not actually participated in the rape, although they had watched and encouraged the perpetrators. N.Y. Times, Mar. 27, 1984, p. 6.

See The Tavern Rape: Cheers and No Help, Newsweek, Mar. 21, 1983, at 101:25 [hereinafter cited as The Tavern Rape].

Clendenin, supra note 80, at A16, col. 1 (quoting the New Bedford Standard Times). The Times also noted that when police returned to the bar later that night, two of the victim’s alleged assailants were still there, and the bar had been open for business the entire time. Id.

Such reports fueled the national outrage over the incident. Approximately 2,500 people took part in a candlelight procession in New Bedford one week after the attack. One protestor was quoted as saying: "[T]hey should take every one of those guys who were there cheering and fine them $1,000 apiece. . . ." Id. at A16, col. 2.

These sentiments were echoed by magazine and newspaper editors throughout the country. See, e.g., Violence and the Social Fabric, America, Apr. 2, 1983, at 148:251-52 ("It is the kind of atrocity that strikes sharply at the national consciousness and stirs feelings of revulsion and outrage miles from the scene of the assault,
When she introduced the Rhode Island bill before the senate, State Senator Gloria Kennedy Fleck expressed concern over the state of the law which would allow witnesses in situations such as the New Bedford rape to escape prosecution with impunity. She stated: "In Rhode Island, rape is not a spectator sport but a criminal offense. We, in Rhode Island, recognize the seriousness of such an offense by being the first state in the country to enact legislation of this magnitude."

B. Drafting Problems

Before crime reporting bills are passed, potentially complex issues must be carefully considered. The problems encountered in the recent legislation, particularly the Rhode Island statute, demonstrate the pitfalls of drafting laws in a "knee-jerk" response to a particular incident.

1. Scope

The initial drafting problem is to determine the range of crimes subject to the reporting duty. The Rhode Island statute is the most narrow legislation in this regard, since it applies only to a "first degree sexual assault or attempted first degree sexual assault." This establishes an unduly restricted scope; other serious crimes pose an equally dangerous threat to society.

Ohio's crime reporting statute has the broadest reach,
making the failure to report any felony a crime. The Massachusetts bill is more limited, mandating the reporting of any "felony punishable by death or life imprisonment." Unfortunately, neither statute provides sufficient guidance to the witness. The duty should be readily ascertainable from the face of the statute. Unless it is known before hand whether the crime witnessed is a felony or a felony subject to certain punishment, it is impossible to be certain of the reporting responsibility. Ideally, a crime reporting statute should specifically list the applicable crimes. Such a method is used in the Pennsylvania bill, which sets forth a duty to report any "murder, rape, kidnapping, robbery or arson."

A second scope issue concerns who should be subject to a reporting duty. The Rhode Island statute and the proposed legislation in Massachusetts and Pennsylvania require an individual to report a crime only if it has taken place in his or her presence. This limitation is a result of drafting the statutes in response to the specific problem raised by the New Bedford rape, where witnesses to a violent crime failed to report it. The myopia reflected in these statutes creates an unnecessarily narrow approach to the crime reporting duty. Since knowledge of the commission of a specified crime is an element of the offense, the responsibility to inform police should be extended to any person who subsequently learns that a crime has taken place. The Ohio statute, for example, simply requires knowledge that a felony has been or is being committed.

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89 The Ohio statute provides in part: "No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities." ORCA § 2921.22.
90 Mass. H.B. 5961, supra note 77.
91 For a discussion of the constitutional problem raised by vague statutes see notes 134-37 infra and accompanying text.
92 See Pa. H.B. 1114, supra note 78.
93 See R.I.G.L. § 11-37-3.1; Mass. H.B. 5961, supra note 77; Pa. H.B. 1114, supra note 78. See note 79 supra for the text of these statutes.
94 See notes 80-83 supra and accompanying text for discussion of the New Bedford incident.
95 See, e.g., R.I.G.L. § 11037-3.1. See notes 101-11 infra and accompanying text for analysis of the knowledge requirement.
96 See ORCA § 2921.22.
Finally, a crime reporting statute should clearly exempt a rape victim from the statutory duties of a witness. Both the Rhode Island statute and the Massachusetts bill contain such a provision.\textsuperscript{87}

2. Reporting Requirements

It is essential that a crime reporting statute set forth sufficient guidelines regarding the reporting duty. A specific time limit within which crimes must be reported should be stated. The Rhode Island statute is insufficient in this regard because it only requires that notification take place "immediately."\textsuperscript{98} The Pennsylvania and Massachusetts proposals take the better approach of requiring disclosure of a crime within twenty-four hours of its commission.\textsuperscript{89}

Additionally, a statute should explicitly provide that knowledge of the commission of a crime is required before any notification responsibility arises. The Rhode Island and Ohio statutes, and the Pennsylvania bill, each contain such a provision.\textsuperscript{100} "Knowledge" in this context relates to an awareness of the circumstances giving rise to the duty, as opposed to the existence of a law establishing such a duty.\textsuperscript{101} As usual, ignorance of the law generally is not a defense,\textsuperscript{102} but ignorance of

\textsuperscript{87} The Rhode Island statute's reporting requirement applies to "any person, other than the victim." R.I.G.A. § 11-37-3.1. Mass. H.B. 5961, supra note 77, states, "For the purpose of this section, a victim of rape shall not be considered a witness."

\textsuperscript{88} See R.I.G.L. § 11-37-3.1.

\textsuperscript{89} See Mass. H.B. 5961, supra note 77; Pa. H.B. 1114, supra note 78.

\textsuperscript{100} The Rhode Island statute requires reporting by one "who knows or has reason to know" of a first degree sexual assault. R.I.G.L. § 11-37-3.1. The Ohio statute provides that a person shall not "knowingly fail to report" a felony, "knowing" that it "has been or is being committed." ORCA § 2921.22(A). The bill introduced in Pennsylvania proscribes failure to report one of the listed felonies which a person "knows", within twenty-four hours. Pa. H.B. 1114, supra note 78.

\textsuperscript{101} See Hall, supra note 27, at 205 (a person does not actually have to know that he is under a legal duty to act, but he must "know the facts to which his duty refers as well as the facts which make it necessary to perform the duty."); Hughes, supra note 14, at 611 (the question is "the defendant's knowledge of the physical circumstances which gear the duty, not knowledge of the duty itself").

\textsuperscript{102} See W. LaFave & A. Scott, supra note 16, at 188. But see Lambert v. California, 355 U.S. 225, 229 (1957). The Supreme Court reversed a conviction of a person violating an obscure municipal ordinance requiring registration of convicted felons on the grounds that it violated due process of law. The Court stated that ignorance of
the relevant circumstances should constitute a defense to a charge under one of the crime reporting statutes.\textsuperscript{103}

Under the Rhode Island statute, the knowledge requirement is embodied in the phrase, “knows or has reason to know.”\textsuperscript{104} Thus, either actual or constructive knowledge can provide the basis for violation of the reporting duty.\textsuperscript{105} Significantly, the use of constructive knowledge permits proof of awareness by circumstantial evidence.\textsuperscript{106} This is a welcome extension because the failure to report under the statutes will often occur without any affirmative conduct which would allow an inference as to the actor’s state of mind.\textsuperscript{107}

If such legislation contains no reference to knowledge, the courts should imply this requirement.\textsuperscript{108} As the Kentucky Court of Appeals observed in \textit{Westrup v. Commonwealth},\textsuperscript{109} “One cannot be said in any manner to neglect or refuse to the law is excusable when “circumstances which might move one to inquire [of the existence of such a law] are completely lacking.” \textit{Id.} However, LaFave finds that in the cases involving a duty to rescue “[t]he Lambert defense would most likely not be available.” W. \textit{LaFave} & A. Scott, \textit{supra} note 16, at 188.

\textsuperscript{103} See Perkins, \textit{supra} note 14, at 677-78.

\textsuperscript{104} See R.I.G.L. § 11-37-3.1.

\textsuperscript{105} Actual knowledge connotes subjective awareness, while constructive knowledge is based on what a reasonable person would be aware of under the circumstances. See W. \textit{LaFave} & A. Scott, \textit{supra} note 16, § 28, at 195-98 for a general discussion of the degrees of knowledge.

\textsuperscript{106} See Note, \textit{supra} note 1, at 172 (different definitions of knowledge impose varying burdens of proof). For instance, in the New Bedford rape case, if it could be demonstrated that a bystander was present in the tavern, and had watched the rape, and that the victim suffered evident physical injury, then the necessary mental state would be established in a jurisdiction allowing constructive knowledge.

\textsuperscript{107} See Frankel, \textit{supra} note 14, at 395 (some omitters might be “aware of the consequences of their failure to act but others would not and our determination of what was in their minds would be so highly speculative as to make the imposition of sanctions undesirable”).

\textsuperscript{108} Several courts have read a knowledge requirement into statutes. See, e.g., Scott v. State, 233 S.W. 1097 (Tex. 1921).

The word “knowingly” or “knowing” does not appear in the description of the act denounced as an offense, and it is not necessary for the state to so allege. If it becomes an issue on the trial, lack of knowledge on the part of a defendant that he had injured some one would excuse him and be a defense to a prosecution. . . . \textit{Id.} at 1100. \textit{See also} People v. Henry, 72 P.2d 915, 921 (Cal. Dist. Ct. App. 1937); People v. Rallo, 6 P.2d 516, 520 (Cal. Dist. Ct. App. 1931); Herchenbach v. Commonwealth, 38 S.E.2d 328, 329 (Va. 1946).

\textsuperscript{109} 93 S.W. 646 (Ky. 1906).
perform a duty unless he has knowledge of the condition of things which require performance at his hands."\textsuperscript{110}

An additional consideration with crime reporting statutes involves the order of prosecution. There are potentially "serious speedy trial problems" if the witness cannot be prosecuted until after the alleged felon's trial.\textsuperscript{111} A statutory provision permitting the witness to be tried first could alleviate the problem. Although the prosecution would be required to prove commission of the underlying crime in order to establish its case against the witness, this burden is no greater than that presently imposed in cases of accomplice liability.\textsuperscript{112} At least in most states, the witness could be convicted even if the alleged felon was subsequently acquitted.\textsuperscript{113}

Statutes should address whether a witness could be prosecuted for failure to report, despite his or her subsequent cooperation in the criminal defendant's trial. The Massachusetts proposal authorizes suspension of any penalty in this situation.\textsuperscript{114} Such provisions are desirable because they give the prosecution leverage in convincing the witness to testify at trial, and allow for flexible treatment of the witness's case if cooperation is shown.

In addition, a statute should specify situations that would justify a witness's failure to comply with the reporting mandate,\textsuperscript{115} as in the case of certain privileged relationships. The Ohio statute is the only legislation that addresses this prob-

\textsuperscript{110} Id. at 648.

\textsuperscript{111} Kiesel, \textit{Who Saw This Happen?} 69 A.B.A.J. 1208, 1208 (Sept. 1983) (quoting Steven Brown, Executive Director Rhode Island ACLU); Telephone interview with Steven Brown, \textit{supra} note 86. For this and other reasons, the Rhode Island ACLU opposes the legislation. \textit{See id.}

\textsuperscript{112} For a general discussion of procedural problems in accomplice liability cases, see W. LaFave & A. Scott, \textit{supra} note 16, \S 63, at 498-501.

\textsuperscript{113} See \textit{id.} at 501. LaFave notes, however, that "the rule requiring internal consistency in a verdict may bar acquittal of the principal and conviction of an accessory in a single trial." \textit{Id.}

\textsuperscript{114} Mass. H.B. 5961, \textit{supra} note 77 states: "Voluntary testimony for the state by said witness in any prosecution against the accused felon shall authorize the court to waive his or her fine."

\textsuperscript{115} In reporting the New Bedford rape case, \textit{Newsweek} magazine stated: "Many of those present said they were too scared to call for help." \textit{The Tavern Rape, supra} note 82, at 101:25. Obviously, a defense based on fear would have to be very cautiously limited or it would destroy any vitality of the rule.
lem. It provides a detailed list of privileges, including those based on relationship, such as attorney and client, doctor and patient, psychologist and patient, priest and penitent, and husband and wife. Disclosure is also excused if it tends to incriminate a member of the actor's immediate family, reveals a confidential news source, violates a confidential communication to a clergyman, or relates to persons in authorized drug treatment or counseling programs.

Finally, a statute should have a provision immunizing from any civil or criminal liability persons who make a good faith report pursuant to the statute. This would serve to encourage reporting as well as to protect witnesses.

3. Penalties

A third issue which must be faced in drafting a crime reporting statute is the appropriate level of sanctions to be imposed upon violation of the law. The Pennsylvania bill contains the most stringent penalties, with the potential of a seven year prison term. One explanation given for the severity of the penalties is that such measures are justified in outrageous situations like the New Bedford rape case.

116 ORCA § 2921.22(E)(1).
117 ORCA § 2921.22(E)(2).
118 ORCA § 2921.22(E)(3).
119 ORCA § 2921.22(E)(4).
120 ORCA § 2921.22(E)(5).
121 ORCA § 2921.22(E)(6).
122 See, e.g., R.I.G.L. § 11-37-3.4. In the original bill as it was introduced, there was no provision requiring a complaint by the victim for charges to be brought, or a provision immunizing reporters from liability. According to the journal of the senate, the bill had been amended before it was passed on April 18, 1983. See 103 R.I.J.S. (calendar).
123 For a discussion of statutes limiting the civil liability of rescuers, see notes 188-89 infra and accompanying text.
124 Under the Pennsylvania bill, if the witness knows that the crime committed would constitute a first or second degree felony, then failure to report it would be a felony of the third degree. Otherwise, it constitutes a misdemeanor of the second degree. See Pa. H.B. 1114, supra note 79. A third degree felony is punishable by a maximum of seven years imprisonment. 18 Pa. Cons. Stat. Ann. § 106(b)(4) (Purdon 1982) [hereinafter cited as PCSA]. A second degree misdemeanor is punishable by a maximum of two years imprisonment. 18 PCSA § 106(b)(7).
125 Telephone interview with Pennsylvania state senator Marianne Arty (Nov. 17, 1983).
In contrast, the Colorado statute is merely a moral statement that persons who believe that a crime has been committed should report it to the police.\textsuperscript{128} Since no penalty is imposed for failure to comply with this obligation, the statute serves no purpose. Those who possess such a refined conscience as to take a reporting duty seriously would be uninfluenced by this legislative pronouncement, and those who do not are unlikely to be stirred from their apathy by a moral comment with no sanctions.

The penalty attached to a reporting violation should reflect the purpose sought to be served. If the goal is no more than providing good words to live by, then sanctions are not warranted; but if the aim is to enforce the duty to report crimes, then some penalty must be imposed. However, too harsh a punishment will hamper prosecution efforts, because a jury may be unwilling to sentence a person who took no action to a lengthy prison term. The best solution would be a compromise between the Pennsylvania bill and the Colorado statute, like those sanctions found in both the Massachusetts bill\textsuperscript{127} and the Rhode Island statute.\textsuperscript{128} Such a moderate penalty structure gives force to the law, while encouraging prosecutions.

One difficulty in relation to the statutory penalties should be observed. All the statutes under consideration make the failure to report a crime a misdemeanor.\textsuperscript{130} If the relevant law of the jurisdiction allows for misdemeanor—manslaughter convictions,\textsuperscript{130} then in the event that a crime victim died as a proximate result of the failure to report, the witness could be

\textsuperscript{128} COLO. REV. STAT. § 18-8-115 (1973 & Supp. 1982) ("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.").

\textsuperscript{127} See Mass. H.B. 5961, supra note 77 (imposes a fine of one hundred to one thousand dollars).

\textsuperscript{128} See R.I.G.L. § 11-37-3.3 (allows for a maximum sentence of one year in prison, or a five hundred dollar fine, or both).

\textsuperscript{129} See R.I.G.L. § 11-37-3.3; ORCA § 2921.22(G); Mass. H.B. 5961, supra note 77; Pa. H.B. 1114, supra note 78.

\textsuperscript{130} See, e.g., ORCA § 2903.04(B): "No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit a misdemeanor." See W. LAFAVE & A. SCOTT, supra note 16, at 545-61 for discussion of the analogous concept of felony murder.
charged with manslaughter. This problem could be eliminated by changing the statutory classification in states retaining misdemeanor—manslaughter offenses.

C. Constitutional Problems

The central problem with crime reporting statutes is their potential vulnerability to constitutional attack under the "void for vagueness" doctrine. Under this concept, a criminal statute will be declared void if there is impermissible uncertainty as to the meaning of its terms. This indefiniteness can relate to the scope of the statute, the conduct forbidden, or the penalty imposed. Such a proscription is necessary because if citizens cannot clearly evaluate whether certain conduct is criminal, the state is given arbitrary power over prosecutions.

1. Similarity to Misprision of Felony

The inaction prohibited under a crime reporting statute is similar to the common law crime of misprision of felony.

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131 Interview with Prof. Sarah Welling, Associate Professor of Law, University of Kentucky (Nov. 9, 1983).
132 The void for vagueness doctrine derives in state courts from the due process clause of the fifth amendment, made applicable to the states by the fourteenth amendment. W. LAFAVE & A. SCOTT, supra note 16, at 83-84.
134 W. LAFAVE & A. SCOTT, supra note 16, at 84. LaFave cites three factors considered by the Supreme Court in ruling on a vagueness question: (1) notice; (2) protection against discriminatory enforcement; and (3) breathing space for first amendment rights. See id. at 85-89.
135 See Allen, Misprision, 78 L. Q. Rev. 40, 60 (1962) (misprision laws leave too much "‘quasi-judicial’ discretion to the police"); Frankel, supra note 14, at 425 (when a criminal statute is overly vague there is "danger that overzealous police and prosecutors will initiate action against him [the person violating the statute] for conduct he could not have known was criminal"). See, e.g., Giacco v. Pennsylvania, 382 U.S. 399 (1966); United States v. L. Cohen Grocery Co., 255 U.S. 81 (1921).
Misprision of felony has been defined as "a failure to report or prosecute a known felon."\textsuperscript{136} Conviction of this misdemeanor would not lie if the person's assistance to the felon was sufficient to make him an accessory.\textsuperscript{137} Legal writers debate whether the offense even existed at common law,\textsuperscript{138} but most courts have conceded at least a theoretical historical basis for the charge.\textsuperscript{139}

Discussing the duties of a bystander in regard to a crime, \textit{Newsweek} stated that after the New Bedford rape the district attorney "considered dusting off an old common-law crime known an 'misprision of a felony,'" but that there were "technical problems with that charge."\textsuperscript{140} Judicial attitude toward this crime is evidenced by the statement of Chief Justice Marshall in \textit{Marbury v. Brooks}:\textsuperscript{141} "It may be the duty of a citizen to accuse every offender, and to proclaim every offense which comes to his knowledge; but the law which would punish him in every case for not performing this duty is too harsh for man."\textsuperscript{142} One commentator has stated that there is only one reported conviction for misprision of felony in America, and this took place in 1878.\textsuperscript{143}

\begin{footnotes}
\item[136] W. LAFAVE & A. SCOTT, supra note 16, at 62 (although it has been said that the crime also included a failure to prevent the commission of a felony, this view is incorrect). \textit{Contra} State v. Biddle, 124 A. 804, 805 (Del. 1923) (defining misprision of felony as "the criminal neglect \textit{either to prevent a felony from being committed or to bring the offender to justice after its commission, but without such previous concert with or subsequent assistance of him as will make the concealer an accessory before or after the fact.") (emphasis added) quoting State v. Wilson, 67 A. 533 (Vt. 1907)).


\item[137] See W. LAFAVE & A. SCOTT, supra note 16, at 526.

\item[138] See 2 H. STEPHEN, HISTORY OF THE CRIMINAL LAW OF ENGLAND 238 (1883). See also W. LAFAVE & A. SCOTT, supra note 16, at 526 ("It is doubtful whether this offense ever had a meaningful existence beyond the textbook writers."); see also Goldberg supra note 136, at 148.

\item[139] See the authorities cited in Misprision of Felony, supra note 136, at 200, n.7.

\item[140] See \textit{The Tavern Rape}, supra note 82, at 101:79.

\item[141] 20 U.S. (7 Wheat.) 325 (1822).

\item[142] \textit{Id.} at 334.

\item[143] See Frankel, supra note 14, at 417, n.170 ("The only reported American con-
It seems clear that misprision of felony has been generally repudiated, at least as it was broadly defined at common law. In the cases which have acknowledged continued vitality in the offense, its parameters have been strictly limited by imposing additional elements such as criminal intent and affirmative action. There is a federal misprision of felony statute, but it has been interpreted so that mere silence without some positive act of concealment is an insufficient basis for a conviction.

The basic flaw with misprision of felony as it existed at common law was its vagueness. Modern crime reporting statutes must eliminate this problem if they are to withstand constitutional scrutiny under the void for vagueness doctrine. Thus, they should be drafted as narrowly as possible. In particular, limiting liability to those situations where the

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\text{viction of misprision of felony which the writer has been able to find was under a New Jersey statute in State v. Hann, 40 N.J.L. 228 (Sup. Ct. 1878).}^{145}
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However, more recently a person was convicted of this crime in England for his actions in connection with the sale of stolen guns, in the leading case of Sykes v. Director of Pub. Prosecutions, [1962] A.C. 528 (H.L. 1962). For critical analysis of this case, see Glazebrook, How Long Then Is the Arm of the Law to Be?, 25 Mod. L. Rev. 301, 317 (1962).

144 See, e.g., Holland v. State, 302 So.2d 806, 809 (Fla. 1974) (misprision of felony repudiated as an offense in Florida); People v. Lefkovitz, 293 N.W. 642 (Mich. 1940) (misprision was “wholly unsuited to American criminal law and procedure as used in this State”).

145 See People v. Garnett, 61 P. 1114 (Cal. 1900); State v. Michaud, 114 A.2d 352 (Me. 1955); Commonwealth v. Lopes, 61 N.E.2d 849 (Mass. 1945); State v. Wilson, 67 A. 553 (Vt. 1907).


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\text{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 not more than $500 or imprisoned not more than three years, or both.}
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148 See Misprision of Felony, supra note 136, at 202 n.17 (“Nearly all legal writers, whether in favor of or opposed to misprision laws, have indicated that the vagueness of the crime is its most serious defect.”). In addition to the authorities cited in note 136 supra, see Wechsler & Michael, A Rationale of the Law of Homicide, 37 COLUM. L. REV. 701, 751 n.175 (1937) (the traditional rule denying criminal liability for the failure to act absent special circumstances “rests upon the ground that no broader rule can be formulated which is not too indefinite as a measure of liability”).

149 See notes 133-35 supra and accompanying text for discussion of this doctrine.
witness has “knowledge” of the crime\textsuperscript{150} goes a long way toward eliminating uncertainty, because the relevant law of each jurisdiction will define what constitutes “knowledge.”\textsuperscript{151}

2. Selective Prosecution

Under the Rhode Island statute, no person can be charged with violating the duty to report unless the police department investigating the crime obtains a signed complaint from the victim alleging a crime.\textsuperscript{152} Since each victim retains sole discretion as to whether “his” witnesses will be charged, the statute allows selective prosecution.\textsuperscript{153} Arguably, this violates the principle of generality, which requires that like cases should be treated alike.\textsuperscript{154} The potential for arbitrary enforcement thus renders the statute unconstitutionally vague.\textsuperscript{155}

Moreover, the provision serves no useful function. If it is intended to give the victim control over the prosecution, as a practical matter this is not needed. Conviction of the witness, like conviction of the alleged rapist, would be virtually impossible without the victim’s cooperation.\textsuperscript{156} Thus, because of the provision’s constitutional defect and lack of utility, a rule requiring a complaint from the victim should be stricken from

\textsuperscript{150} See notes 101-111 supra and accompanying text for discussion of the knowledge requirement.

\textsuperscript{151} Kentucky follows the Model Penal Code definition of “knowingly.” “A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.” KRS § 501.020(2) (1975 & 1982 Supp.). The state of mind essential for “knowledge” is awareness. Lawson, \textit{Kentucky Penal Code: The Culpable Mental States and Related Matters}, 61 Ky. L.J. 657, 663 (1972-73). In Kentucky knowledge of the facts or circumstances can be based on personal information or on information provided by others, but not on suspicion and deliberate avoidance of information related to that suspicion. \textit{Id.} at 664-65.

\textsuperscript{152} See R.I.G.L. § 11-37-3.2 (“No person shall be charged under section 11-37-3.1 unless and until the police department investigating the incident obtains from the victim a signed complaint against said person alleging a violation of section 11-37-3.1.”).

\textsuperscript{153} Telephone interview with Dorothy Lohmann, board member, Rhode Island Rape Crisis Center (Nov. 16, 1983).

\textsuperscript{154} See Frankel, supra note 14, at 426.

\textsuperscript{155} See LAFAVE & A. SCOTT, supra note 16, at 87-88 for a discussion of the arbitrary enforcement problem.

\textsuperscript{156} Telephone interview with Dorothy Lohmann, supra note 153.
any crime reporting statute.

D. Policy Considerations

The Rhode Island Rape Crisis Center opposes the state's recent legislation for various reasons. First, the victim may lose control over the situation because she "might be unwillingly coerced into being a state's witness." Second, police investigation into the victim's personal life, based on suspicions that a failure to report a crime had taken place, could unduly violate the victim's privacy. Lastly, if the witness's trial takes place before that of the alleged rapist, the victim must appear in court twice, and this is burdensome and unrealistic.

Dealing with these objections clearly involves a balancing of interests. On the one hand are the rightful concerns for the victim's privacy, convenience, and control over the prosecution. This must be weighed against society's interest in punishing persons who witness serious crimes such as rape and fail to report them to the police, and the ultimate increased protection afforded to rape victims as a result of the statute. On balance, the benefits of the legislation should outweigh the personal sacrifices which may be required of the individual victim.

III. Statutes Imposing a Duty to Render Assistance

Vermont was the first state to enact legislation establishing a duty to rescue strangers in peril. The statute requires:

A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be ren-
dered without danger or peril to himself or without interference with important duties to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.161

Minnesota recently adopted a statute which is basically similar to this provision.162 In contrast to this limited amount of legislation in the United States, many European countries have criminal statutes imposing a duty of rescue.163 Thus, a complete analysis of the problems involved with such legislation should make reference to the European statutes as well as the American laws.

A. Statutory Requirements

As with the crime reporting legislation, vagueness is a central problem in statutes that impose a duty to render assistance.164 Persons must have fair notice of what acts or omissions are prohibited under the law.165 With the Vermont

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161 VSA tit. 12, § 519(a).
162 The statute provides:
Any 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 he can do so without danger or peril to himself 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.

MINN. STAT. ANN. § 604.05(1) (West 1984) [hereinafter cited as MSA]. Violation of the statute is a petty misdemeanor, which is defined as “a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than $100 may be imposed.” MSA § 609.02(4)(a).
164 See notes 133-35 supra and accompanying text for analyses of vagueness under the crime reporting statutes.
165 See W. LAFAVE & A. SCOTT, supra note 16, at 85-87 for analysis of the notice concept. See also the authorities cited in note 133 supra. One commentator has noted that problems of vagueness in the context of criminal omissions are heightened by the
and Minnesota statutes, the meanings of many elements of the offense are uncertain.

A statute should clearly state what type of danger an individual must be in before a duty of rescue arises. The Vermont and Minnesota statutes are not sufficiently definite as to this matter, simply providing that the person must be "exposed to grave physical harm." Arguably, an alcoholic unconscious in the gutter is exposed to such harm, but probably no one would contend that the drafters of the statute intended it to apply in this kind of situation.

More definite guidelines must be established. For example, some European statutes provide that the responsibility of rescue only exists when there is "sudden and imminent danger to human life." In addition to this language, the term "involuntary" should be included, so that the fortuitous nature of the circumstances would be emphasized.

Additionally, American statutes do not adequately specify the immediacy and degree of risk which will abrogate the duty to aid others. They state that rescue is excused where action would cause "danger or peril to himself [the potential rescuer] or interfere with important duties owed to others." Since the possibility of peril to the rescuer is present in most emergencies, more guidance should be given as to the nature of the risk. In European countries, the degree of risk necessary to relieve the potential rescuer of any duty ranges from an extreme of only danger to the individual's life, to serious danger to him or others, to the other extreme allowing non-compliance with the statute when any risk to the rescuer is

"aura effect." See Frankel, supra note 14, at 426. Under this theory, the state will regulate conduct to an unacceptable degree because, due to the indefiniteness of the statutory terms, persons "bordering on the fringe of criminality" will obey the law rather than run the risk of its punishment. Id. This is a matter of particular concern in cases involving first amendment rights. See the authorities cited in note 133 supra.

166 MSA § 604.05(1); VSA tit. 12, § 519(a).

167 See Rudzinski, supra note 163, at 96. The Netherlands, Norway, Denmark, Poland and Czechoslovakia limit the duty of rescue to such cases. Other countries, including Germany, France, Belgium, Italy, Turkey and Hungary extend the duty to "any serious danger to bodily integrity and health." Id. at 98. Portugal limits the rescue obligation to third party attack. Id. at 99.

168 See, e.g., MSA § 604.05(1); VSA tit. 12, § 519(a).
involved.169

The Minnesota statute also requires that the person be “at the scene of an emergency” before he must render aid.170 Such a negative definition is frankly useless, as it does nothing to state what is the “scene of an emergency,” but merely what is not.

A statute imposing a duty to render assistance should also describe the standard under which a rescuer’s actions shall be judged. Both the Vermont and Minnesota statutes use the standard that rescuers must give “reasonable assistance.”171 The Minnesota statute elaborates on this point by stating that reasonable assistance “may include obtaining or attempting to obtain aid from law enforcement or medical personnel.”172 In the European countries, the form of assistance required ranges from personal intervention or obtaining help from others, to only personal intervention, to statutes giving the potential rescuer a choice of giving aid or immediately notifying the proper authorities.173

Although a statute using a reasonableness standard is susceptible to varying interpretations, this aspect should withstand a vagueness claim because a more specific statement is not possible.174 The action required is not capable of exact guidelines, because it will depend upon the infinite range of possible factual circumstances. Additionally, as has been

169 Rudzinski explains that in Rumania only the risk of life to the potential rescuer excuses his duty, while in Norway, Denmark, Germany, Russia and Belgium, the duty is abrogated by “serious (or special) danger or sacrifice to the person of the potential rescuer or other persons.” Rudzinski, supra note 163, at 105. “In Portugal and France intervention is obligatory only when no risk for the rescuer is involved; in Portugal he apparently need not even risk his property.” Id. at 106.

170 See MSA § 604.05(1). This is basically defined so as to not mean in a hospital. See MSA § 604.05(2).

171 See MSA § 604.05(1); VSA tit. 12, § 519(a).

172 MSA § 604.05(1).

173 “The Netherlands, France and Belgium explicitly require either personal intervention or the obtaining of help from other persons.” In Italy, Turkey, Rumania and Russia “the law expressly formulates an alternative duty either to render help or to inform immediately the proper authority.” Rudzinski, supra note 163, at 107-08.

174 This is known as the principle of necessity. Note, supra note 133, at 95. Under this principle, the loss to the individual, resulting from the “vague” standard, is balanced against the danger to the public interest associated with a more specific statement. Id. at 96.
pointed out, this is no more vague than the concept of negligence under tort law, based on what the "reasonable man" would have done in that situation.\textsuperscript{175}

A statute of this type should also state who is required to render aid. Both the Vermont and Minnesota statutes limit the offense by requiring knowledge that the endangered person is exposed to grave physical harm.\textsuperscript{176} Thus, as with crime reporting statutes,\textsuperscript{177} ignorance of the circumstances establishing the duty should be a defense. Vermont imposes the additional statutory requirement that violation of the statute must be willful.\textsuperscript{178}

Other defenses are also recognized by the existing statutes. Both cite danger to the potential rescuer as a defense.\textsuperscript{179} The Vermont statute also excuses the duty to give assistance when it would interfere with "important duties owed to others" or if "that assistance or care is being provided by others."\textsuperscript{160} Other viable common law defenses include mistake,\textsuperscript{181} lack of capacity,\textsuperscript{182} and impossibility.\textsuperscript{183} Since the

\begin{itemize}
\item \textsuperscript{175} See Wechsler & Michael, supra note 148, at 751 n.175 (rule punishing omissions would be "no less specific than the standard of liability for negligent acts").
\item \textsuperscript{176} See MSA § 604.05(1); VSA tit. 12, § 519(a).
\item \textsuperscript{177} See notes 102-10 supra and accompanying text for a discussion of crime reporting statutes and the defense of ignorance.
\item \textsuperscript{178} See VSA tit. 12, § 519(c). See also United States v. Murdock, 290 U.S. 389, 394-95 (1933) for discussion of the term "willful." One author states in connection with the Vermont statute that "[t]he impact of requiring violations to be willful is to place a heavier burden of proof and persuasion upon the state's attorney." See Note, supra note 1, at 175. See generally Lawson, supra note 151, at 658-61.
\item \textsuperscript{179} See MSA § 604.05(1); VSA tit. 12, § 519(a).
\item \textsuperscript{180} See VSA tit. 12, § 519(a).
\item \textsuperscript{181} See W. LaFAve & A. Scott, supra note 16, § 47, at 356-60 for discussion of mistake negating a requisite mental state. However, mistake will not necessarily provide a defense for misfeasance. In People v. Young, 210 N.Y.S.2d 358 (N.Y. App. Div.), rev'd, 229 N.Y.S.2d 1 (N.Y. 1962), Mr. Young saw two men seize and wrestle with a boy. He leaped to the boy's defense and fought with the two men. \textit{Id.} at 3. Actually, the two men were detectives effecting an arrest of the boy. \textit{Id.} Young was charged with assault, and although the Supreme Court, Appellate Division found in favor of Young, on the basis of excusable mistake and quashed his conviction, the New York Court of Appeals reinstated the conviction. 229 N.Y.S.2d at 2-3. For discussion of this case, see Waller, supra note 8, at 142-44.
\item \textsuperscript{182} See Perkins, supra note 14, at 678 ("the ability to do what was not done is inherent in the concept of negative action"). See generally W. LaFAve & A. Scott, supra note 16, § 26, at 188 ("one cannot be criminally liable for failing to do an act which he is physically incapable of performing"). "A person is not guilty of an offense
omissions are prohibited under the statutes without regard to a specific result, there can be no defense predicated on lack of causation.184

Finally, both the Vermont185 and Minnesota186 laws have provisions limiting the civil liability of rescuers. According to Vermont scholars, this was inserted because of the medical community's fear of malpractice suits.187 Most states, including Kentucky,188 have similar enactments, usually restricting unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.” MODEL PENAL CODE § 2.01(1) (Proposed Official Draft 1962).

183 See W. LaFave & A. Scott, supra note 16, § 26 at 188-89.

184 For discussions of causation in the context of criminal omissions, see Hall, supra note 27, at 195-97; Kirchheimer, supra note 9, at 617-20 (The “problem of causality plays no role when statutes establish a penalty for disobedience regardless of whether or not undesirable consequences have occurred.”). For general analysis of causation in the criminal law see Lawson, supra note 151, at 686-700.

185 VSA tit. 12, § 519(b) provides:
A person who provides reasonable assistance in compliance with subsection (a) of this section shall not be liable in civil damages unless his acts constitute gross negligence or unless he will receive or expects to receive remuneration. Nothing contained in this subsection shall alter existing law with respect to tort liability of a practitioner of the healing arts for acts committed in the ordinary course of his practice.

186 MSA § 604.05(2) states:
Any person, including a public or private nonprofit volunteer firefighter, volunteer police officer, volunteer ambulance attendant, and volunteer first provider of emergency medical services, who without compensation or the expectation of compensation renders emergency care 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 unless that person acts in a willful and wanton or reckless manner in providing the care. Any person rendering emergency care during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering such care, shall be excluded from the protection of this section.

187 See Franklin, supra note 9, at 53-55. See also Note, supra note 1, at 154-60 (discussing legislative history of Vermont statute).

188 The Kentucky good Samaritan statute provides that certain health professionals are exempt from civil liability for acts performed at the scene of an emergency, unless such acts “constitute willful or wanton misconduct.” See KRS § 411.148 (1974 & 1982 Supp.). An opinion of the Kentucky Attorney General states, “KRS 411.148, the ‘Good Samaritan Act’ is in violation of Ky. Const. § 54 to the extent that it limits the liability of persons named therein for death or physical injuries caused by negligent medical treatment rendered without remuneration or the expectation of it.” 79 Ky. Op. Att’y Gen. 535 (Oct. 17, 1979).
liability when aid is given by certain qualified members of the medical profession—the so-called good Samaritan statutes.  

B. Civil Versus Criminal Liability

Although the language contained in the Minnesota and Vermont provisions is almost identical, there is a fundamental difference: whereas the Vermont statute is criminal, the Minnesota statute is civil. However, both laws are inadequate because such a statute should contain both civil and criminal elements.

The constitutional provision allegedly violated by the statute states, "The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property." Ky. Const. § 54. Under this constitutional provision, a Kentucky automobile guest statute limiting recovery of damages for injuries to cases where intentional wrong of the owner or driver was demonstrated was held unconstitutional. See Ludwig v. Johnson, 49 S.W. 2d 347, 351 (Ky. 1932).

It has been observed that constitutional challenges to good Samaritan statutes in other states have not met with success. See Note, supra note 1, at 163 nn. 127-29. Additionally, the opinion of the Attorney General is of questionable validity in light of the recent Kentucky Supreme Court case of Carney v. Moody, 646 S.W. 2d 40 (Ky. 1982). This case expresses a deference to legislative judgment, even where certain claims may be barred as a result. Id. at 41. Applying this reasoning to the Kentucky good Samaritan provision, it is logical to assume that its constitutional validity would also be upheld.

For an excellent appendix containing citation to all the state statutes and placing these statutes in categories according to location, type of call and immunity see Note, supra note 1, at 182-83. For a collection of cases arising under the good Samaritan statutes see Annot., 39 A.L.R. 3d 222 (1971). Discussion of these statutes is beyond the scope of this Note. See generally Franklin, supra note 9, at 52-53 & nn.8-15; Norris, Current Status and Utility of Emergency Medical Care Liability Law, 15 Forum 377 (1979-80); Note, Good Samaritans and Liability for Medical Malpractice, 64 Colum. L. Rev. 1301 (1964); Note, Good Samaritan Statutes: Time for Uniformity, 27 Wayne L. Rev. 217 (1980-81); Comment, The Good Samaritan and the Law, 32 Tenn. L. Rev. 287 (1964-65).

Compare MSA § 604.05 with VSA tit. 12, § 519. See notes 161-62 supra and accompanying text for the text of these provisions.

After a lengthy discussion of whether the Vermont statute is civil or criminal, one Vermont scholar concludes that the statute is criminal in view of the penalty and the legislative history. See Note, supra note 1, at 167-70.

See note 162 supra.

Certain consequences are associated with a statute's civil or criminal characterization. A civil statute will not afford a violator the constitutional due process rights of a criminal defendant. See generally W. LaFAVE & A. SCOTT, supra note 16, § 4, at 14-21 (discussion of the rudiments of criminal procedure). Further, the civil/criminal distinction can have a significant impact on the way a complaint is brought.
A criminal statute is "the core of any regulatory pattern. It can state the legislature's command most clearly, and its penalties can be keyed more closely than damages to the gravity of the offense."\textsuperscript{194} For these reasons, the failure to rescue others in danger should constitute—at least in part—a public wrong.\textsuperscript{195} A civil statute giving rise to civil liability is an incomplete remedy.

However, a statute without any civil component would also be lacking.\textsuperscript{196} There are some persuasive arguments against imposing civil liability;\textsuperscript{197} but the possibility of a monetary award is a powerful incentive for an individual to bring charges in an area where prosecutors may be reluctant to do so.\textsuperscript{198} Additionally, civil liability can provide an essential deterrent to violation and necessary compensation to victims.\textsuperscript{199}

Vermont's criminal statute is silent as to the possibility of

\begin{itemize}
  \item See Note, supra note 1, at 168 n.155.
  \item Id.
  \item Id.
  \item Id.
  \item Id.
\end{itemize}
resulting tort liability. However, courts could use such a criminal statute as a statement of legislative policy to adopt a civil duty. This has been done in numerous cases which were brought under the European criminal statutes. Ideally, a statute should not be totally silent as to the propriety of civil liability, because courts may conclude that they have no discretion in the matter. Thus, an appropriate provision could state that the legislature expresses no opinion as to the desirability of civil liability, and that expansion in this area is solely within the discretion of the courts.

C. Effectiveness

Even if duty to aid statutes are enacted, there is no guarantee that, as a practical matter, they can be effective enough to accomplish results. Although initially the Vermont statute was viewed as landmark legislation, one commentator has noted that since the statute's enactment in 1967, there has been only one decision construing it, and no prosecutions under it. However, numerous prosecutions have been re-

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200 See VSA tit. 12, § 519. The statute does repudiate any intent to change existing law regarding "tort liability of a practitioner of the healing arts for acts committed in the ordinary course of his practice." VSA tit. 12, § 519(b).

201 See Franklin, supra note 9, at 56. "The courts might develop a common law action if the legislature passes a criminal statute but remains silent about civil consequences. . . . Given the legislature's declaration of the existence of a duty to rescue, courts might readily use that statute, by analogy, to develop a related civil duty." Id. See also Note, supra note 1, at 145 ("Courts have often used statutes as standards of conduct to impose civil liability."). See generally Landis, Statutes and the Sources of the Law, in Harvard Legal Essays 213 (1934), reprinted in 2 Harv. J. on Legis. 7 (1965); Thayer, Public Wrong and Private Action, 27 Harv. L. Rev. 317 (1913-14); Traynor, Statutes Revolving in Common-Law Orbits, 17 Cath. U.L. Rev. 401 (1967-68); Note, The Use of Criminal Statutes in the Creation of New Torts, 48 Colum. L. Rev. 456 (1948).

For citations to case law on this subject see Note, supra note 1, at 145 n.13.

202 See Rudzinski, supra note 163, at 113.

203 This proposal was suggested by Prof. William Fortune, Professor of Law at the University of Kentucky. Interview with Prof. Fortune (Nov. 9, 1983).

204 See Miller, Who Saw This Happen?, 69 A.B.A.J. 1208, 1209 (1983) ("These statutes will be no more effective than jaywalking laws.").

205 See Franklin, supra note 9, at 61 ("On paper, at least, Vermont has made history, but the statute's practical effect remains to be seen."). Ten years later, another commentator cited the lack of any enforcement of the statute in the fourteen years since it had been enacted. See Note, supra note 1, at 160-61. One decision has
MAKING APATHY CRIMINAL

ported under the European statutes. It is thus possible that a statute establishing a duty to render assistance to others in danger could be effective, if prosecutorial reluctance could be overcome.

The unjustifiably low penalties under the Vermont and Minnesota statutes may contribute to a lack of enforcement. The maximum sanction under both is a $100 fine. Such a meager penalty could be viewed as evidence that the legislature itself does not take the offense seriously. A higher fine, combined with a possible prison term, would give a statute more force and emphasize to prosecutors that the legislature is concerned enough to back the offense with substantial penalties.

Additionally, if more states pass criminal statutes, the power of these laws, as both statements and shapers of public opinion, will probably convince prosecutors to consider statutory violations more worthy of enforcement. The Rhode Island experience is encouraging in this regard, as the state instituted a prosecution within months of enacting the crime reporting statute.

D. Policy Considerations

The basic problem with offenses establishing a duty of rescue is whether the advantage to be gained in the prevention of crime and apprehension of dangerous persons outweighs the threat to individual freedom posed by the impos-


See Rudzinski, supra note 163, at 102-04; Tunc, supra note 44, at 57-58.

See MSA §§ 604.05(1), 609.02(4)(a); VSA tit. 12, § 519(c).

Several commentators have noted the power of the law as a shaper of public attitude. See Gusfeld, supra note 4, at 196 (“Laws are statements of public policy and opinion as well as instruments for courts to implement and police to enforce.”); Tunc, supra note 44, at 44 (expressing the “extraordinary sway of the law as a shaper of opinion. The law can help to awaken public opinion to the requirements of justice and even to the requirements of ethics.”); Waller, supra note 8, at 141 (“And whether or not the law leads to direct, individual changes of heart, it at least continues to serve as a public enunciation of what ought to be done and a public denunciation of what is considered reprehensible.”) (emphasis in original).

Telephone interview with Rhode Island State Senator Gloria Kennedy Fleck (Nov. 16, 1983).
tion of the duty. It is contended that morality cannot be legislated, and that attempting to do so will deprive rescue of its altruistic nature. It is further contended that the responsibility for keeping peace should be exclusively in the police force, and that such a duty would violate privacy interests by encouraging "officious intermeddling." On the other

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210 See Frankel, supra note 14, at 424; Misprision of Felony, supra note 136, at 209 ("The question [is] whether the sacrifice of certain negative freedoms, such as the freedom not to respond to the crime victim's pleas for help, is worth the attainment of certain positive freedoms, such as the freedom to live one's life relatively unworried by crime.").

211 Gregory, supra note 34, at 38-39 ("But I do not see how we can legislate charity, altruism and courage—both physical and moral."). But see Tunc, supra note 44, at 43 ("It is true that a change in men's hearts cannot be ordered by legislation. . . . However, it is the duty of the jurist to bring the law closer to the unequivocal requirements of ethics, when these requirements can be enforced without an unduly heavy process.").

The objection that "morality cannot be legislated" seems pointless. If one means by this the way people feel inside cannot be changed by enacting such a statute, then the purpose of the law has been misinterpreted. If the statement means that moral obligations cannot be reflected in a legal responsibility, then the fact that the laws relating to obscenity, prostitution, rape, bigamy and even murder represent just this kind of legislation, has been forgotten.

212 But see D'Amato, supra note 196, at 805 ("[T]he fact that a majority of the members of a state might find it in their self-interest to pass such legislation does not necessarily deprive any smaller class of people of the possibility of moral behavior.").

213 See The Good Samaritan and the Law at ix, xiv (J. Ratcliffe ed. 1966) ("Are we to encourage the ordinary citizen to take direct action in the prevention of crime or the apprehension of criminals, after centuries of social development clearly pointing toward the elimination of vigilante action and the concentration of the responsibility for keeping the peace in the hands of public officials?""). For discussion of the police attitude toward good Samaritans, see Goldstein, Citizen Cooperation: The Perspective of the Police, in The Good Samaritan and the Law 199, 206-07 (J. Ratcliffe ed. 1966) (refers to failure to cooperate in investigations and prosecutions, and concludes that "[w]e have allowed barriers to develop in our criminal justice system that frustrate the efforts of those city dwellers who do sense a responsibility to cooperate.").

214 It has been declared that a statute establishing a duty of rescue would turn a conscientious citizen into an "intermeddling snoop." See Frankel, supra note 14, at 426. Contra Honore, Law, Morals and Rescue in The Good Samaritan and The Law 225 (J. Ratcliffe ed. 1966) (a line must be drawn "between altruism and meddling" on the basis of "whether the intending rescuer would reasonably suppose that his help will be welcome. . . . The line will be difficult to draw exactly, but lawyers are professional line-drawers.").

Legal articles actually opposing a duty of rescue are scant. See Epstein, A Theory of Strict Liability, 2 J. Legal Stud. 151 (1973); Note, The Duty to Rescue, supra note 34, at 321. For a philosophical criticism of Epstein, see Weinrib, supra note 3, at 258-79.
hand, it has been argued that individualistic concerns must be subordinated to laws for the common benefit,\textsuperscript{215} that the practical difficulties of such a statute are no more serious than in other areas of the law,\textsuperscript{216} and that a legal duty would promote rescue efforts.\textsuperscript{217}

These are the policy arguments which the Kentucky legislature would have to confront in deciding whether to enact a statute imposing some duty to render assistance to strangers. To gain some indication of what citizens in Lexington, Kentucky, might think about this issue, a question was submitted for the non-scientific poll at a local television station. The question was: "Should persons who see a crime be required to report it to the police?" The response rate was 47.9% "yes" and 52.1% "no."\textsuperscript{218} Of course, the survey lacks reliability, but it is interesting to note.

\textsuperscript{215} See Hughes, \textit{supra} note 14, at 634 ("evil of interfering with individual liberty by compelling assistance is much outweighed by the good of preserving human life"); \textit{Bad Samaritan, supra} note 34, at 639 (persons have a right to have life preserved by society, and "[f]rom this right appears to proceed the concomitant duty of other men to rescue, that is, to preserve their neighbor's life in time of peril.").

\textsuperscript{216} "[E]qually difficult problems in other areas have not dissuaded the courts from dealing with them and therefore mere complexity does not seem to constitute an adequate basis for the courts' reluctance to decide these cases." \textit{Bad Samaritan, supra} note 34, at 638.

One such practical problem is that of "diffuse responsibility," where there is a crowd of potential rescuers and everyone fails to act. "[D]iffuse responsibility can be difficult only if the law refuses to recognize contribution." Rudolph, \textit{The Duty to Act: A Proposed Rule}, in \textit{THE GOOD SAMARITAN AND THE LAW} 243, 273 (J. Ratcliffe ed. 1966). See Hughes, \textit{supra} note 14, at 634 (this is no different from situations which commonly happen in offenses of commission such as riots). See also Frinell, Dahlstrom & Johnson, \textit{supra} note 5, at 161 (results of bystander studies demonstrate persons are least likely to give assistance in a crowd because they assume the problem is not their responsibility).


\textbf{Research on causes of altruism suggests that an expanded legal duty to aid may lead to more rescue behavior, primarily because the legal duty would (1) decrease ambiguity surrounding situations in which help is needed by providing a rule or norm of what behavior is considered appropriate, and (2) affect the cost-reward calculus people undertake in deciding whether to come to another's rescue.}

\textit{Id.} at 561.

\textsuperscript{218} Results of non-scientific poll conducted by the News Center at WKYT-TV in Lexington. Figures as to the number of viewers who called in on the question are unavailable.
CONCLUSION

If Kentucky were to consider enacting a crime reporting statute or a statute establishing a duty to render assistance to persons in danger, the primary concern would be to draft the laws carefully enough to avoid constitutional attack under the void for vagueness doctrine.\footnote{See notes 132-35 supra and accompanying text for a discussion of the void for vagueness doctrine.} A crime reporting statute should contain a knowledge requirement and should also state with particularity the following: (1) the crimes which give rise to the duty to report; (2) the persons who are subject to the duty; (3) the time period within which witnesses must report the crime; (4) the order of prosecution; (5) the consequences of witness cooperation; (6) the available defenses; and (7) the exceptions to the statute based upon privileged communications. Additionally, the statute should not leave the decision to prosecute to the victim’s discretion.

A model crime reporting statute might read as follows:

(1) Any person, who knows or has reason to know that a murder, rape, kidnapping, robbery or arson has been or is being committed, must notify law enforcement authorities within 24 hours of learning that such crime has been committed.

(a) In a prosecution under (1) of this statute, the witness may be tried before the trial of the accused felon.
(b) For purposes of the reporting requirement under (1), a victim of rape shall not be considered a witness.
(c) Voluntary testimony for the state by any person violating the reporting duty under (1) in any prosecution against the accused felon shall authorize the court to waive his or her penalty under (f).
(d) Any person making a good faith report pursuant to this statute shall be exempt from civil liability for acts which do not constitute gross negligence.
(e) Compliance with (1) is not required in the following cases: [here list all applicable defenses and privileges].
(f) Violation of the reporting requirement in (1) is punishable by a fine of up to $1,000 and/or one year imprisonment.
In connection with a statute establishing a duty to render assistance, the legislation should specifically state: (1) when the duty arises; (2) what degree of risk will abrogate the duty; (3) what action is required; (4) who must give aid; and (5) any statutory defenses.

A model statute requiring aid to others in peril might state:

(1) A person who knows that another is involuntarily in sudden and imminent danger of serious bodily harm or death shall, to the extent that assistance can be rendered without risk of serious bodily injury or death to himself or herself, give reasonable assistance to the endangered person unless that reasonable assistance or care is being provided by others.

   (a) [here insert good Samaritan provision].
   (b) Violation of the duty in (1) is punishable by a fine of up to $1,000 and/or one year imprisonment.

(2) The legislature expresses no opinion as to the desirability of civil liability arising from the criminal statute contained in (1), and expansion in this area is solely within the discretion of the courts.

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