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COMMENT


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\textsuperscript{1} See Genesis 4:9 (In response to the Lord's question to Cain, "Where is your brother Abel," Cain replied, "I don't know. Am I my brother's keeper?").
I. Introduction and Background

In September 1998, two members of Congress proposed a bill which would impose criminal penalties on anyone who witnesses acts of sexual abuse on minor children and does not report the abuse to the proper authorities.\(^2\) The impetus for this Good Samaritan-style bill was an enraged California, and indeed national, populace which strongly believed that in the aftermath of the tragedy involving seven-year-old Sherrice Iverson, justice had not been served.

During Memorial Day weekend in 1997, David Cash, Jr. watched from an adjacent casino bathroom stall as his best friend, Jeremy Strohmeyer, sexually assaulted and eventually killed young Sherrice Iverson. Cash did not witness the entire episode, but he knew what was happening and elected to do nothing about it. He never mentioned it to anyone until Strohmeyer was caught. At that point, Cash, currently a student at the University of California at Berkeley, began talking about the incident. Perhaps he talked about it more than he should have.\(^3\)

When Strohmeyer emerged and found Cash, he confessed to his friend that he had molested and killed the young girl.\(^4\) Cash was astonished, but chose not to say or do anything, and the two friends continued casino-hopping late into that Nevada night.\(^5\) Cash never intended to turn his friend over to the authorities.\(^6\) In fact, when asked if he could go back and change anything, Cash defiantly replied, "I don't feel there's much I could have done differently."\(^7\)

Over a year after the incident, Strohmeyer pleaded guilty to charges of murder, kidnapping, and sexual assault.\(^8\) He received a sentence of life without parole.\(^9\) Cash, on the other hand, faces no legal punishment.\(^10\) Though some societies have enacted "Good Samaritan laws" which require citizens to intervene in emergency situations, there is no such law in Nevada.\(^11\) However, Cash has faced significant


\(^3\) See 60 Minutes: The Bad Samaritan (CBS television original broadcast, Sept. 27, 1998) (rebroadcast Aug. 29, 1999 as The Unreported Crime) [hereinafter 60 Minutes] [transcript available in LEXIS, newsfile, transcripts, and at 1999 WL 16209106] (detailing the circumstances surrounding the Sherrice Iverson tragedy and featuring an interview with David Cash, Jr.).


\(^5\) See 60 Minutes, supra note 3.

\(^6\) See id. Cash stated, "I didn't want to be the one that — that turned him in." Id.

\(^7\) Id.


\(^10\) Perhaps if Cash had taken steps to conceal his knowledge of the incident or if he had aided Strohmeyer in his escape from the casino, Cash could have faced accessory after the fact charges. Nevada does not have case law defining an accessory. In Oklahoma, the three elements of the crime of accessory after the fact are: (1) the predicate felony was completed; (2) the offender had knowledge that the person he is or was aiding committed the crime; and (3) the accessory concealed or aided the individual that committed the crime. See State v. Truesdell, 620 P.2d 427, 428 (Okla. Crim. App. 1980). Cash's nonfeasance, however, is not punishable under current Nevada law.

\(^11\) Only eight states have laws requiring witnesses of a crime to report it and/or offer aid to the
sanctions in the court of public opinion. A throng of furious Californians, and indeed livid Americans nationwide, cringe at Cash's insensitive inaction and the callous reaction which he has arrogantly displayed to the public since Sherrice's death.\textsuperscript{12} "I'm not going to get upset over someone else's life," Cash told the \textit{Los Angeles Times} in a July 1998 interview.\textsuperscript{13} "I just worry about myself first."

Responding to this public outrage and the absence of any legal redress in Nevada or California, Sherrice's parents and friends sought passage of "Sherrice's Law."\textsuperscript{15} Sherrice's loved ones secured 30,000 signatures on a petition in support of a law requiring adults who witness the sexual abuse of children to assist the victim or report the crime.\textsuperscript{16} Her family's efforts proved to be fruitful when Sen. Barbara Boxer (D-Cal.) and Rep. Nick Lampson (D-Tex.) introduced Sherrice's Law in Congress on September 9, 1998.\textsuperscript{17}

Should Sherrice's Law successfully withstand congressional scrutiny and become law, individuals like Cash will not be able to observe sexual abuse and, with impunity, fail to report the crime.\textsuperscript{18} The theory behind this law appears to be a natural and instinctive control of behavior, but in fact this law would overturn volumes of cases in which, at least in most United States jurisdictions, the courts have consistently held that there is no duty to aid victims or report crimes.\textsuperscript{19} The tide, however, is turning in the United States. Sherrice's Law is part of a recent legislative trend in which certain duties regarding assisting the victims of crimes or accidents are becoming better established.\textsuperscript{20} This legal trend is beginning to expand traditional notions of the concept of the duty to assist, which has long existed in tort law.\textsuperscript{21}

The proposed federal statute, Sherrice's Law, amends the existing statute under 42 U.S.C. \S 5106a.\textsuperscript{22} In its current form, section 5106a places certain requirements

\begin{itemize}
\item victim(s); Florida, Massachusetts, Minnesota, Ohio, Rhode Island, Vermont, Washington, and Wisconsin.
\item For a discussion of these statutes, see, e.g., Jessica R. Givelber, Note, \textit{Imposing Duties on Witnesses to Child Sexual Abuse: A Faille Response to Bystander Indifference}, \textit{67 Fordham L. Rev.} 3169, 3191 (1999); see also infra notes 72-105 and accompanying text.
\item 12. Even Strohmeyer, who asked for forgiveness at his sentencing, said of Cash for failing to act and for his callousness, "He makes me sick." \textit{Milestones}, supra note 9, at 31.
\item 14. Id.
\item 15. See Booth & Willwerth, supra note 4, at 59.
\item 16. See \textit{Teen Admits Girl's Slaying}, supra note 8, at 8.
\item 18. See \textit{144 Cong. Rec.} S10,118-19.
\item 19. See C.D. Sumner, Annotation, \textit{Private Person's Duty and Liability for the Failure to Protect Another Against Criminal Attack by Third Person}, \textit{10 A.L.R.3d} 619, 626 (1967); see also, e.g., J.A.W. v. Roberts, 627 N.E.2d 802, 809 (Ind. Ct. App. 1994) ("As a civil society we certainly encourage third parties and bystanders to aid the helpless . . . . However, we have declined to impose a duty to act absent the existence of a special relationship.").
\item 20. Since 1967, eight states have enacted Good Samaritan laws requiring an affirmative duty to assist. \textit{See supra} note 11.
\item 21. \textit{See supra} note 19; \textit{infra} text accompanying notes 40-57.
\end{itemize}
on states which receive grants for child abuse prevention and treatment programs.\textsuperscript{23}

5106a. Grants to States for child abuse and neglect prevention and treatment programs

. . . .

(b) Eligibility requirements.

(1) State plan.

(A) In general. To be eligible to receive a grant under this section, a State shall, at the time of the initial grant application and every 5 years thereafter, prepare and submit to the Secretary a State plan that describes the areas of the child protective services system described in subsection (a) of this section that the State intends to address with amounts received under the grant.

(B) Additional requirements. After the submission of the initial grant application under subparagraph (A), the State shall provide notice to the Secretary of any substantive changes to any State law relating to the prevention of child abuse and neglect that may affect the eligibility of the State under this section.

(2) Coordination. A State plan submitted under paragraph (1) shall, to the maximum extent practicable, be coordinated with the State plan under part B of title IV of the Social Security Act [42 U.S.C.A. \textsection 620 et seq.] relating to child welfare services and family preservation and family support services, and shall contain an outline of the activities that the State intends to carry out using amounts received under the grant to achieve the purposes of this subchapter, including

(A) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a Statewide program, related to child abuse and neglect that includes . . . [various required provisions deleted]

. . . .

(B) an assurance that the State has in place procedures for responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions), procedures or programs, or both (within the State child protective services system), to provide for — [various required provisions deleted]

. . . .

(C) a description of —

(i) the services to be provided under the grant to individuals, families, or communities, either directly or through referrals aimed at preventing the occurrence of child abuse and neglect;

(ii) the training to be provided under the grant to support direct line and supervisory personnel in report taking, screening, assessment, decision making, and referral for investigating suspected instances of child abuse and neglect; and

(iii) the training to be provided under the grant for individuals who are required to report suspected cases of child abuse and neglect;

(D) an assurance or certification that the programs or projects relating to child abuse and neglect carried out under part B of title IV of the Social Security Act [42 U.S.C.A. \textsection 620 et seq.] comply with the requirements set forth in paragraph (1) and this paragraph; and

(E) an assurance in the form of a certification by the chief executive officer of the State that the State has in effect and is enforcing a State law providing for a criminal penalty on an individual 18 years of age or older who fails to report to a State or local law enforcement official that the individual has witnessed another individual in the State engaging in sexual abuse of a child.

\textit{Id.} \textsection 5106a(b) (unitalicsized portion); 144 \textit{Cong. Rec.} S10,119 (daily ed. Sept. 9, 1998) (italicsized portion, proposed additional language); see also Sherrice Iverson Act, S. 2452, 105th Cong. (1998).

23. \textit{See supra} note 22.
The revised statute would require states to criminalize the failure to report any observed sexual abuse of a child or forego the federal grants for child abuse and neglect prevention and treatment programs. 24 The question arises, however, whether this reporting requirement would be prudent legislation which preserves individual rights while also meeting the current needs of our society.

This comment will explore the advantages and disadvantages of this proposed cousin of Good Samaritan laws through the analysis and discussion of existing Good Samaritan and child abuse reporting laws in the United States and particularly in Oklahoma. 25 Part II will examine the different variations and viability of current Good Samaritan laws in the United States. Part III will address the widespread child abuse reporting statutes and how they differ from the proposed form of Sherrice's Law. Part IV explores existing Oklahoma laws and contemplates whether there is already something similar to Sherrice's Law in Oklahoma. Finally, Part V contains an analysis of Sherrice's Law and its viability.

The principal question raised by the proposal of Sherrice's Law is whether the impassioned opposition of Cash's critics to his immoral behavior translates into strong public policy which Congress should codify. The simple response to this question is "yes." Although in some instances it may be unwise to "legislate morality," 26 our nation should not permit its citizens to act, or fail to act, with callous indifference. 27 Sherrice's Law would not impose an unreasonable, liberty-infringing duty on Americans. Sherrice's Law encourages citizens to aid in the prevention of crimes. The principle behind Sherrice's Law not only celebrates the virtues of neighborly conduct but also improves our society as a whole while still preserving individual freedoms.

II. Good Samaritan Laws

In contemporary American jurisprudence, there are two categories of laws commonly referred to as "Good Samaritan laws." The first fits the traditional notion of a Good Samaritan law because it imposes on citizens an affirmative "duty to assist." This category of laws can also be referred to simply as "duty to assist" or "duty to rescue" laws. 28 Only eight American states have enacted versions of a

24. See supra note 22.
25. The existing laws, as discussed in this comment, deal exclusively with the criminal, and not the civil, implications of the affirmative duties to assist and report. See John M. Adler, Relying upon the Reasonableness of Strangers: Some Observations About the Current State of Common Law Affirmative Duties to Aid or Protect Others, 1991 Wis. L. Rev. 867 (1991).
26. See, e.g., HUBBARD, infra note 43; 60 Minutes, supra note 3. Peggy Leen, a Nevada deputy district attorney, points out that "historically, [our society] has[n't] been very successful in our efforts to legislate morality. From prohibition to prostitution, you can tell somebody not to do it, you can regulate it, you can punish it, but ultimately, it doesn't do a very good job of changing the conduct." Id.
27. The term "callous indifference" is frequently used when an individual's disregard for another is particularly contemptible so as to merit an award of punitive damages. See, e.g., Smith v. Wade, 461 U.S. 30, 56 (1983); Graham v. Satkoski, 51 F.3d 710, 714 (7th Cir. 1995).
28. The terms "Good Samaritan law," "duty to assist," and "duty to rescue" can be used interchangeably. Except where otherwise noted, these terms share the same meaning for the purposes
duty to assist law. 29 The second and more widely enacted category of Good Samaritan law is that which exempts rescuers from liability for any negative results of their rescue attempt. 30 These laws exist in every state and the District of Columbia. 31 For one reason or another, both types of statutes, though very different in purpose and effect, have come to bear the same name. This common reference to two very different categories of laws can be confusing. For both statutes, the name "Good Samaritan law" presumably has its roots in the well-known biblical parable. 32

A. The Parable of the Good Samaritan

The parable of the Good Samaritan in the Bible is one of the more familiar stories remembered from Sunday School. 33 Responding to the question "[w]ho is my neighbor?" from an "expert in the law," Jesus related the story to a group of followers. 34 The parable depicts a severely injured man on the side of a road. Robbers had beaten him badly and had left him there to die. Passersby, including a priest, went out of their way to avoid the helpless man. He received no help until a Samaritan 35 came along and tended to the man's injuries. He helped the man to his feet, took him on his donkey to an inn, and nursed him back to health. Ultimately, when the Samaritan had to leave, he gave the innkeeper enough money for the man to remain at the inn for as long as he needed. 36

Upon completing the story, Jesus explained that the neighbor to the unfortunate man was the one who had mercy on him. He then instructed the expert in the law to "[g]o and do likewise." 37 The parable illustrates the rarity of a helpful, selfless character while demonstrating his silent reward. If this quality of character was rare in biblical times, it has become virtually nonexistent today. The uncertainty and indifference in today's world casts great doubt on the likelihood of a similar episode of selfless kindness unfolding in present times. Today, common sense, fear of dangerous confrontations with strangers, and the accompanying precautions prevent most Americans from being "Good Samaritans" in the sense the Bible illustrates.

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29. See supra note 11 and accompanying text; infra notes 72-105 and accompanying text.
30. The term "rescuer" is used liberally throughout this comment to refer to a person who renders or could render aid or assistance to a person in an emergency situation.
33. See id.
34. Id. at 10:25.
35. Samaritans were the biblical people who settled in the district of Samaria and who were despised by Jews as foreigners. Thus, Samaritans were subjected to racist treatment by many Jews. See OXFORD DICTIONARY OF THE BIBLE 332 (1st ed. 1997). The modern definition of a Samaritan is a "person who is compassionate and helpful, especially to those in adversity." NEW SHORTER OXFORD ENGLISH DICTIONARY 2677 (5th ed. 1993).
37. Id. at 10:37.
Regardless of one's religious beliefs, the parable and many biblical precepts still serve as a standard for ideal behavior and a guideline for how we would generally want our neighbors to act. This requirement to treat one another with respect is one of the roots on which our society is based and remains an ideal for human behavior.

B. Traditional Good Samaritan Laws: The "Duty to Assist"

In an attempt to require modern citizenry to display the same type of behavior displayed by the Good Samaritan in the Bible, some societies have enacted so-called "Good Samaritan laws" which impose a duty on the members of those societies to provide assistance to a party in need. Traditionally, tort law has imposed a duty to assist only on people who have a special relationship with someone who is in need of aid. For many years, lawmakers, legal scholars, students, and citizens have contemplated the necessity and practicality of implementing a Good Samaritan law which creates the heretofore resisted affirmative duty to rescue or assist, even in the absence of a special relationship.

A thorough and lengthy examination of such laws in the historical context has not yielded much in the way of legislation. Many commentators assert that while the laws of our communities are based on fundamental notions of right and wrong, legislators should not legislate morality. Those who have spent time scrutinizing this issue have typically concluded that our nation's legal system as a whole does not support an affirmative duty to assist or rescue a person in distress. This


39. See supra note 38.

40. Many western societies impose this duty on their citizens. For example, Australia, France, and eight states in the United States have enacted laws imposing a duty to assist. See supra note 11 and accompanying text; infra notes 72-105 and accompanying text.

41. See, e.g., Sumner, supra note 19. A special relationship is traditionally defined as that of, for example, parent-child, employer-employee, master-servant, etc. See id.


43. See EBERTH HUBBARD, CONTEMPLATIONS 65 (1902) ("You cannot legislate virtue into any people. There is no man ever any better than he wants to be."). But see BENJAMIN N. CARDOZO, THE PARADOXES OF LEGAL SCIENCE 37 (1928) ("Law accepts as the pattern of its justice the morality of the community whose conduct it assumes to regulate.").

44. See, e.g., Sumner, supra note 19, at 623. "In the absence of special circumstances, such as a special relationship between the parties or knowledge by the defendant of an extraordinary danger, there is no duty to protect another from criminal attack. The existence of such a duty is widely, and sometimes
widely advocated conclusion, finding favor even from prosecutors, rests on the common assertion that morally bankrupt behavior is not always a punishable crime.\textsuperscript{45}

There are no laws on the books today which require that private citizens act as selflessly as the Good Samaritan in the Bible and thus provide extensive remedial care to another citizen who is injured or otherwise in need.\textsuperscript{46} To require this extent of care would be to impose an immense burden.\textsuperscript{47} The closest example of a law resembling the parable is a statute which requires that anyone present at the scene of a crime or an emergency give reasonable assistance to the victim or victims without imperiling him or herself or others.\textsuperscript{48} These laws, referred to as Good

\begin{footnotesize}
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  \item[44.] Categorically, denied by the courts. \textit{Id.}; see also Weinreb, supra note 42.
  \item[45.] See 60 Minute, supra note 3. As Nevada Deputy District Attorney Peggy Leen pointed out, under existing Nevada law "[m]oral reprehensibility isn't a crime. You have to participate — do something affirmatively — to assist in the commission of the crime. Watching and failing to report, regrettably, is not a crime." \textit{Id.}
  \item[46.] In most of the communities that have imposed such a duty on their citizens, it is limited to merely a duty to provide "reasonable" assistance.
  \item[47.] Furthermore, the law requires that if someone should go so far as to expend his or her own resources to assist or rescue another, as the biblical parable exemplifies, the rescuer is entitled to reimbursement under current legal trends. See \textsc{Restatement (First) of Restitution} §§ 116, 117 (1936).
\end{itemize}
\end{footnotesize}
Samaritan laws, are also known as "duty to assist" or "duty to rescue" laws. Many of these statutes simply require that a bystander make an effort to obtain aid from a professional rescuer or law enforcement official. The failure to observe the statutory mandates results in a criminal penalty under most of these statutes. This type of law is common in many civil law jurisdictions and has been passed in eight American States: Florida, Massachusetts, Minnesota, Ohio, Rhode Island, Vermont, Washington and Wisconsin. Aside from the laws in these three states, the ordinary private American citizen generally has no duty to assist another who is in danger or distress.

The laws of these eight states are similar to those found in several overseas western cultures, like France and Australia. The prevalence of Good Samaritan laws in other countries has periodically brought about debate over the absence of such laws in the majority of the United States. As recently as 1997, during the investigation of the death of Princess Diana, commentators weighed the advantages and disadvantages of such laws. In the aftermath of her death, various commentators made arguments both advocating and condemning the creation of a duty to assist. However, the heated debate did not result in any legislative response in the form of Good Samaritan laws.

(d) For the purposes of this section, "compensation" does not include payments, reimbursement for expenses, or pension benefits paid to members of volunteer organizations.

Id.

49. See supra note 28 and accompanying text.
50. See MINN. STAT. ANN. § 604A.01(1).
51. The Minnesota statute provides that "[a] person who violates this subdivision is guilty of a petty misdemeanor." MINN. STAT. ANN. § 604A.01(1) (West 1995 & Supp. 1999). According to the terms of section 609.02(4a) of the Minnesota Statutes, a "petty misdemeanor" carries a punishment of "a fine of not more than $200."

The Vermont statute imposes a $100 fine. See infra note 72. Minnesota's and Vermont's criminal classifications of this duty calls to mind that civil liability may also exist in many failure to assist situations. This comment focuses solely on statutorily imposed, criminally sanctioned duties. For a lengthier discussion of tort liability for failures to assist, see Adler, supra note 25.
53. See 57A AM. JUR. 2D Negligence § 114 (1989).
54. See Pardun, supra note 42, at 591-92.
55. After the death of Princess Diana, allegations abounded that paparazzi photographers, instead of reporting an emergency, took photographs of the mangled bodies of the Princess and the other victims of the accident which claimed her life. See, e.g., Ann G. Sjoerdma, Good Samaritan Law? Not in America, ROANOKE TIMES & WORLD NEWS, Sept. 18, 1997, at A9.
57. All eight of the duty to rescue laws currently in effect were enacted by 1983. For an argument supporting these laws, see Jack Wenik, Forcing Bystander to Get Involved: Case for Statute Requiring Witnesses to Report Crime, 94 YALE L.J. 1787 (1985). But see Sjoerdma, supra note 55. For a summary of the eight state statutes mandating a duty to rescue and arguing against such a state-imposed...
C. Modern Good Samaritan Laws: Exempting Rescuers from Liability

Beginning with the first rescuer liability statute in 1959, every state and the District of Columbia has passed some form of what many individuals refer to as a Good Samaritan law. These laws, however, do not follow the principles of the biblical parable, nor do they even require an affirmative act on the part of a bystander or witness to an emergency. In fact, the majority of Good Samaritan (rescuer) laws tend to contradict the type of duty to assist law found in eight American states and other western cultures. Most Good Samaritan laws enacted in the United States serve to limit the liability of a rescuer. These laws exempt individuals from potential liability for the negative consequences of his or her efforts to assist another.

In effect, these laws encourage good deeds by rewarding the selfless behavior of a passerby who offers assistance. However, these rescuer liability laws reward good deeds only by ensuring that the individual who performs the good deed will not face civil liability as a result of any negative consequences of his or her assistance or attempt to assist. Instead of affronting citizens with potential criminal consequences for failing to act, this type of Good Samaritan law serves to favor the unselfish assistance of those who need emergency assistance in our litigious society.

D. Is the Term "Good Samaritan Law" Appropriate to Describe Contemporary Laws?

Upon reflection, it is clear that the biblical parable and the modern statutes bear little similarity to each other. This disparity is partly because the title "Good

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duty, see, e.g., Givelber, supra note 11, at 3191-94.
58. California was the first state to enact such a statute. See Ben Zion Eliash, To Leave or Not to Leave: The Good Samaritan and Jewish Law, 38 ST. LOUIS U. L.J. 619, 622 n.19 (1994).
59. See supra note 31.
60. See, e.g., 76 OKLA. STAT. § 5 (1991). The section reads, in pertinent part, "Any person who in good faith renders or attempts to render emergency care . . . shall not be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care." Id.
61. See id.
62. For a discussion of this law as it exists in Oklahoma, see infra notes 126-34 and accompanying text.
63. See infra notes 126-34 and accompanying text.
64. The eight states which have enacted duty to assist laws have also enacted statutes exempting rescuers from civil liability for their actions. See, e.g., MINN. STAT. ANN. § 604A.01.
Subd. 2. General immunity from liability. (a) A person who, without compensation or the expectation of compensation, renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance, unless the person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. This subdivision does not apply to a person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering the care, advice, or assistance.
Id.
Samaritan law" is a misnomer. Furthermore, the title is confusing because it is used to refer to two very different types of statutes which embody almost opposite legal principles.65

A true Good Samaritan law would not require its citizens to provide benevolent assistance, but instead would somehow reward those who perform good deeds or otherwise benefit society by their selfless actions. The ideal would be a society full of citizens who were under no legal obligation to perform good deeds and would feel comfortable enough to act without fear of penalty. After all, people who purport to act as Good Samaritans should do it out of genuine beneficence. Ideally, they should not act because they are moved by an incentive, because they are under a state-imposed duty to act, or because they might face criminal penalties for failing to act. Moreover, if one should be unselfish enough to perform a good deed, one should not fear some type of liability for an inadequate performance of the deed.

Lifting the title of the statute from the Bible seems inappropriate at best when one realizes that these laws glaringly contravene the spirit of the biblical parable. In an "ideal world," true rewards for good deeds would not come in the form of an exemption from civil tort liability, nor even in the form of monetary compensation, such as a tax break for charitable donations.66 Perhaps the reward would suffice in the form of self-gratification or maybe even in the form of public recognition for honorable and unselfish conduct.67 The true Good Samaritan would neither seek nor accept any recognition for his unselfish behavior. Sadly, we do not live in an "ideal world."

E. Effectiveness of Good Samaritan, "Duty to Assist" Laws

Before 1967, there was no legal duty anywhere in the United States to assist a person in an emergency situation absent a special relationship.68 Beginning with Vermont's statute requiring citizens to aid victims of emergencies, more states have passed similar laws in what seems to be a slowly continuing trend.69 The eight states which enacted duty to assist laws have had the laws in place for at least fifteen years,70 yet there has been little documentation about the enforcement of these laws, and there have been relatively few instances where the laws have actually been tested judicially.71

65. See supra text accompanying notes 28-32.
66. An interesting exception to some Good Samaritan laws takes effect in situations where the would-be rescuer will receive compensation for his deed (like a paramedic) or is under a contractual relationship with the rescuee (such as a "master" rescuing a "servant"). He is then unable to exempt himself from liability. See, e.g., 76 OKLA. STAT. § 5 (1991); WIS. STAT. ANN. § 940.34(3) (West 1996).
67. There are similar rewards recognizing selfless behavior which are bestowed frequently by governors, the president, and other government officials.
68. See supra note 11; supra note 41 and accompanying text.
69. The trend began in 1967 with the Vermont statute and continues today with the proposal of Sherrice's Law.
70. Oklahoma has never enacted such a statute, nor does it appear that, to date, the state legislature has considered anything similar.
71. See infra notes 84-103 and accompanying text.
1. Existing Laws

Each of the eight states with existing duty to rescue laws have varying approaches to what is required of its citizens.\textsuperscript{72} Although this comment will explore only two states' duty to rescue laws in detail,\textsuperscript{73} it is worthwhile to note some of the more significant differences.\textsuperscript{74} Most states with duty to rescue laws impose only a duty to report or to "provide reasonable assistance" to someone in danger, and only when the reporter or rescuer himself is not imperiled by this mandate.\textsuperscript{75} Ohio's statute, on the other hand, is probably the broadest of the eight statutes because it imposes a duty to report on all witnesses of felonies, without exception.\textsuperscript{76}

Vermont was the pioneer state in enacting duty to assist legislation, by enacting its "Duty to Aid the Endangered" Act in 1967.\textsuperscript{77} This law requires one with knowledge of another in danger to provide the endangered party with "reasonable assistance," unless it might endanger the rescuer himself or interfere with the efforts of other rescuers.\textsuperscript{78} The maximum penalty for violating Vermont's duty to assist statute is a $100 fine.\textsuperscript{79}

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\item See infra text accompanying notes 75-105.
\item For a more detailed discussion of the differences of each state, see, e.g., Givelber, supra note 11, at 3191-94.
\item Seven of the eight states make reporting or the provision of "reasonable assistance" incumbent upon their citizens. These states are: Florida, Massachusetts, Minnesota, Rhode Island, Vermont, Washington and Wisconsin. See FLA. STAT. ANN. § 794.027; MASS. GEN. L. ch. 268, § 40; MINN. STAT. ANN. § 604A.01; R.I. GEN. LAWS § 1-56-1; VT. STAT. ANN. tit. 12, § 519; WASH. REV. CODE ANN. § 9.69.100(4); WIS. STAT. ANN. § 940.34.
\item See OHIO REV. CODE ANN. § 2921.22(A) ("No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.").
\item VT. STAT. ANN. tit. 12, § 519.
\item Emergency medical care
\begin{enumerate}
\item A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others.
\item 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.
\item A person who willfully violates subsection (a) of this section shall be fined not more than $100.00.
\end{enumerate}
\item See id.
\item See id.; supra note 51 and accompanying text.
\end{enumerate}
\end{footnotesize}
One of the other eight states with a duty to assist statute in place is Wisconsin. Having first enacted its Good Samaritan law in 1983,80 Wisconsin's statute specifically criminalizes the failure to report a crime or aid a victim of a crime involving potential bodily harm.81 Typical of most of the duty to assist statutes, the Wisconsin law contains a provision exempting citizens from compliance where it would place them in danger, but it also adds two other conditions wherein compliance is not required: first, if compliance interferes with duties owed to others; and second, if others have already aided the victim or called for assistance.82 These three exceptions have similar incarnations in other Good Samaritan statutory provisions.83 However, their existence, while understandable, could create confusion in interpretation. For instance, under the first exception, there is no clear definition of what duty or duties might take precedent over the duty to assist. Under the second exception, significant questions of fact could arise as to whether a potential rescuer actually or in good faith believed that help had already been summoned. Some of these very questions were recently addressed by the Wisconsin Court of Appeals.84

Duty to aid victim or report crime.
(1) (a) Whoever violates sub. (2)(a) is guilty of a Class C misdemeanor.
(b) Whoever violates sub. (2)(b) is guilty of a Class C misdemeanor and is subject to discipline under § 440.26(6).
(c) Whoever violates sub. (2)(c) is guilty of a Class C misdemeanor.
(2) (a) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.
   (b) A person need not comply with this subsection if any of the following apply:
      1. Compliance would place him or her in danger.
      2. Compliance would interfere with duties the person owes to others.
      3. In the circumstances described under par. (a), assistance is being summoned or provided by others.
      4. In the circumstances described under par. (b) or (c), the crime or alleged crime has been reported to an appropriate law enforcement agency by others.
   (3) If a person renders emergency care for a victim, § 895.48(1) applies. Any person who provides other reasonable assistance under this section is immune from civil liability for his or her acts or omissions in providing the assistance. This immunity does not apply if the person receives or expects to receive compensation for providing the assistance.

Id.
81. See id.
82. See id.
83. Although most all of the statutes contain an exemption if there is a danger element, Vermont's statute also addresses the other two conditions as follows: "[a] person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to the exposed person unless that assistance or care is being provided by others. Vt. Stat. Ann. tit. 12, § 519(a) (West 1996).
84. See State v. LaPlante, 521 N.W.2d 448 (Wis. Ct. App. 1994); infra notes 87-92 and accompanying text.
2. Judicial Application of the Laws

Although not all of the duty to rescue statutes have faced significant judicial challenge, and seem largely untested, Vermont's and Wisconsin's laws have faced scrutiny at least to some extent by the states' respective courts. The very first application of the Wisconsin statute occurred in 1994 in State v. LaPlante. In LaPlante, the Wisconsin Court of Appeals affirmed the trial court's conviction of LaPlante for failing to assist a party invitee who was attacked at a party hosted by LaPlante. Affirming the conviction meant overcoming the most significant challenge launched against a Good Samaritan law reported to date. To affirm the conviction, the court rejected several constitutional arguments advanced by the defendant about the statute's exceptions and their vagueness, as well as the statute's vagueness in defining standards of guilt. Having withstood LaPlante's bold challenge, the Wisconsin statute stands firm, yet it has been rarely enforced. Furthermore, even the state's jurists doubt the law's potency. Even the LaPlante trial judge commented that the statute "reveals in ambiguity." Like Wisconsin's statute, the Vermont statute has also undergone significant judicial interpretation only once. The Vermont Supreme Court held in State v. Joyce, that the Good Samaritan statute "does not create a duty to intervene in a fight." This holding simply serves to underscore the language in the statute which guards against imperiling the rescuer. In the statute's thirty-one-year history,

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85. Both statutes, Vermont's and Wisconsin's, have had only one meaningful judicial challenge. See State v. Joyce, 433 A.2d 271 (Vt. 1981); State v. LaPlante, 521 N.W.2d 448 (Wis. Ct. App. 1994).
86. LaPlante was the first, and seemingly only, prosecution under the Wisconsin Good Samaritan statute. See Dave Daley, Few Prosecuted Under State 'Samaritan' Law; Like France, Wisconsin Requires Residents to Help Crimes, Accident Victims, MILWAUKEE J. SENTINEL, Sept. 5, 1997, at 9.
87. LaPlante, 521 N.W.2d at 452.
88. See id.
89. As of the publication date, LaPlante is the most significant and comprehensive reported challenge to a Good Samaritan law.
90. See LaPlante, 521 N.W.2d at 450. LaPlante advanced six theories about the statute's vagueness; each took the form of a question. The court rejected all six, which were as follows: (1) to what degree must a witness have knowledge in order for the law to impose a duty to aid; (2) must the witness have reported the crime to appropriate law enforcement authorities in order for the duty to report to attach; (3) does the witness actually have to believe crime was being committed; (4) what is the nature of the four exceptions listed in section 940.34(2)(d)(1)-4) of the Wisconsin statutes; (5) does the duty to report attach only during the crime's commission and not afterwards; and (6) when does one become a victim? See id.
91. See Daley, supra note 86, at 9.
92. Id. at 9.
95. Id. at 273.
96. See VT. STAT. ANN. tit. 12, § 519 (1996) (establishing a duty "to the extent that [reasonable assistance] can be rendered without danger or peril to [the rescuer]").
Joyce is the only case which involves the prosecution of a defendant for allegedly failing to comply with Vermont's Good Samaritan law.97

3. Effectiveness of the Laws

Apart from Joyce and LaPlante, two relatively indeterminate cases,98 there has been little use made of the Good Samaritan statutes which have been enacted in the eight duty-to-rescue states.99 These states seldom test their statutes judicially or even charge their citizens with violations of these duties very frequently.100 This scarcity of enforcement raises several questions about the effectiveness of such laws. Perhaps the lack of enforcement of these statutes suggests that the eight modern Good Samaritan duty to assist laws are hardly prime examples of worthwhile, enforceable moral duties. For one reason or another, they are rarely tested, cited, or even used.101 The fact that there is not much case law involving the existing Good Samaritan statutes raises several questions.102

First, are the citizens of the respective states aware of the statutes? Without any awareness on the part of the citizenry, violations of these statutes are less likely to be reported. Second, are these statutes clear and understandable to the average citizen?103 One problem underlying all of these laws is that the definition of what is defined as "reasonable assistance" is unclear. Does reasonableness entail stopping and getting out of one's car, or does a good faith effort, such as simply dialing 911 on a cellular phone and hoping that the proper authorities will find the distressed parties in time to render aid, constitute reasonableness? Third, are courts and law enforcement officials willing to impose criminal penalties, even if the crimes are only misdemeanors, on citizens who, for whatever reason, were in a position to render aid and did not? It seems that this last issue may be one of the biggest obstacles that these laws confront.104 A fourth problem is the rather technical proposition that an unreported breach of the Good Samaritan statute could create a very circular web of confusion. In contrast to the generally pleasing notion of a community-wide duty to assist, it is the more egregious crime of non-assistance, like that committed by Cash, that these types of statutes seek to prevent and punish. Put another way, society is more concerned with punishing the potentially life-threatening inaction of people like Cash than with codifying moral conduct. Although the aim of these laws is cloaked with good intentions, their existence in

97. See Sabia, 669 A.2d at 1197.
98. For a discussion of Sabia, a third case which makes reference to the Vermont Good Samaritan statute, see id.
99. For a discussion of why there may be a lack of application of these statutes, see infra discussion in text accompanying notes 101-05.
100. See, e.g., Daley, supra note 86.
101. See, e.g., id.
102. See Pardun, supra note 42, at 597.
104. See Veilleux, supra note 31.
American law has apparently been heretofore impractical. Perhaps the lack of application of these laws echoes the sentiment that one cannot legislate virtue.105

4. The Bad Samaritan: Would Cash Have Escaped Prosecution if Nevada Had a "Duty to Assist" Law?

Depending on what type of duty to assist statute Nevada decided to enact, Cash could have been liable for his inaction under a simple Good Samaritan statute like that of Vermont or Wisconsin.106 If the Nevada law were similar to that of Wisconsin, Cash would have been under a duty to at least report the incident, as duty Sherrice's Law seeks to impose.107 However, under any of the eight American statutory examples, Cash could have defended himself in court by claiming assistance was not required because of the threat of endangering himself.

The defense of danger would have been more likely if the Nevada statute lacked a reporting alternative. The ability to report would avoid the peril posed by getting involved. Cash could have cited Joyce108 in an attempt to show that the interplay between Strohmeyer and young Sherrice was a struggle similar to a fight. Cash's attorneys would then portray Strohmeyer as an intimidating and volatile young man of whom Cash was frightened.109 Successfully proving Strohmeyer's unstable nature could have led to an acquittal of Cash under a Good Samaritan statute, as long as there was no alternative provision for a duty to report the emergency.110

III. Child Abuse Reporting Statutes

Reporting requirements have become commonplace since the mid-1960s. Some form of a mandatory child abuse reporting statute exists in the statutory provisions of all fifty states and the federal government.111 Most of these statutes were passed between 1963 and 1967, when the Children's Bureau of the Department of Health, Education and Welfare created the first model reporting laws in an effort to explore

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105. See Hubbard, supra note 43.
109. It is unclear whether, in reality, Cash's nonfeasance can be attributed to his fear of disturbing Strohmeyer, or whether his inaction is attributable to his asserted position that it was none of his business. See Zamichow, supra note 13.
110. The absence of a Nevada Good Samaritan statute is at least in part what caused the public outcry. This discussion may appear speculative, but it is interesting to consider whether the public would truly have been satisfied with the existence of a duty to assist or report law in Nevada.
111. The federal provision was most likely enacted as a comparable statute for the District of Columbia. See 18 U.S.C. § 2258 (1994) ("Failure To Report Child Abuse").

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.

Id.
their viability.\textsuperscript{112} Legislatures designed these statutes according to these model laws, but all of the laws have undergone drastic changes over the last thirty to thirty-five years.\textsuperscript{113} In their current form, these statutes criminalize the failure to report suspected evidence of child abuse.\textsuperscript{114} Since the statutes were first enacted,

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§ 7103. Reporting of abuse or neglect or birth of chemically-dependent child — Retaliation by employer — Contents of report — Violations — Spiritual treatment of child through prayer

A. 1. Every:

a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,

b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,

c. teacher of any child under the age of eighteen (18) years, and

d. other person

having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected abuse or neglect occurred. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Department. Any report of abuse or neglect made pursuant to this section shall be made in good faith.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred.

3. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

4. The reporting obligations under this section are individual, and no employer, supervisor or administrator shall impede or inhibit the reporting obligations of any employee or other person. No employer, supervisor or administrator of any employee or other person required to provide information pursuant to this section shall discharge, or in any manner discriminate or retaliate against, the employee or other person who in good faith provides such child abuse reports or information, testifies, or is about to testify in any proceeding involving child abuse or neglect; provided, that the person did not perpetrate or inflict such abuse or neglect. Any employer, supervisor or administrator who discharges, discriminates or retaliates against the employee or other person shall be liable for damages, costs and attorney fees. Internal procedures to facilitate child abuse or neglect reporting and inform employers, supervisors and administrators of reported suspected child abuse or neglect may be established provided that they are not inconsistent with the provisions of this section and that such procedures shall not relieve the employee or such other person from the individual reporting obligations required by this section.

5. Every physician or surgeon making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or copies of the examination on which the report

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\textsuperscript{114} See, e.g., 10 OKLA. STAT. §§ 7103, 7104 (Supp. 1999) (Child Abuse Reporting and Prevention Act).
was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.

B. If the report is not made in writing in the first instance, it shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, as soon as may be after it is initially made by telephone or otherwise and shall contain the following information:

1. The names and addresses of the child and the child's parents or other persons responsible for the child's care;
2. The child's age;
3. The nature and extent of the abuse or neglect, including any evidence of previous injuries;
4. The nature and extent of the child's dependence on a controlled dangerous substance; and
5. Any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. Any person who knowingly and willfully fails to promptly report any incident as provided in this section may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

D. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.
2. If a court determines that an accusation of child abuse or neglect made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed Five Thousand Dollars ($5,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

E. 1. Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent, legal guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.
2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

F. Nothing contained in this section shall be construed to exempt or prohibit any person from reporting any suspected child abuse or neglect pursuant to subsection A of this section.

Id. § 7103.

§ 7104. Report of criminally inflicted injuries
Any physician, surgeon, osteopathic physician, resident, intern, physician's assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be criminally injurious conduct including but not limited to child physical or sexual abuse, as defined by the Oklahoma Crime Victims Compensation Act, shall report orally or by telephone the matter promptly to the nearest appropriate law enforcement agency.
their existence has been, at least in part, responsible for a marked increase in child abuse reporting nationwide.\textsuperscript{115} Logically, health and child care professionals are in the best position to notice cases of child abuse by seeing actual physical evidence of the abuse on the child.

While the statutes vary nationwide in different respects, the statutes historically contain seven similar elements.\textsuperscript{116} The common elements in these statutes are:

1. the definition of reportable conditions;
2. a list of persons who must report;
3. the level of certainty required of reporters;
4. the penalty for the failure to report;
5. immunity for reports made in good faith;
6. the exception of communication privileges; and
7. definition of reporting procedures.\textsuperscript{117}

Some variations on these elements include what persons are listed as mandated reporters,\textsuperscript{118} the penalties for incorrect reporting,\textsuperscript{119} and the state-imposed penalty for failing to report.\textsuperscript{120} A violation of these statutes is usually classified as a misdemeanor, resulting in a fine.\textsuperscript{121}

These reporting statutes vastly differ from Good Samaritan laws in that there is no "emergency rescue" element. These statutes simply require an ex post facto reporting of suspected abusive behavior which is believed to have occurred elsewhere in the child's life. The proposed Sherrice's Law is a variation on both themes, combining the element of reporting and the element of emergency, thus making it a hybrid of two existing legal models.

\textbf{IV. The Law in Oklahoma}

Like every other state, Oklahoma has what it calls a Good Samaritan Act (also referred to as a rescuer statute), which exempts from liability those who assist others during an emergency.\textsuperscript{122} The Oklahoma legislature has also passed a child abuse reporting statute.\textsuperscript{123} However, Oklahoma legislators have never enacted a Good Samaritan statute like the ones found in the eight states discussed in Part

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\textsuperscript{115} Id. § 7104.
\textsuperscript{116} See Vieth, supra note 112.
\textsuperscript{117} See id.
\textsuperscript{118} Oklahoma law requires anyone (the statute says any "other person") who is suspicious of child abuse to report it. 10 OKLA. STAT. § 7103(A)(1)(d) (Supp. 1999). For discussion, see infra notes 146-50 and accompanying text.
\textsuperscript{119} See, e.g., 10 OKLA. STAT. § 7103(D) (Supp. 1999).
\textsuperscript{120} See, e.g., id. § 7103(C).
\textsuperscript{121} Upon a cursory review of similar statutes, it appears that a violation is often classified as a misdemeanor.
\textsuperscript{122} See 76 OKLA. STAT. § 5 (1991) (Oklahoma Good Samaritan or "Rescuer" law).
\textsuperscript{123} See 10 OKLA. STAT. § 7103 (Supp. 1999) (Oklahoma Child Abuse Reporting and Prevention Act).
II. In Oklahoma, there is not a duty to act unless one finds evidence of child abuse.

A. The Oklahoma Good Samaritan Act: Limiting Rescuer Liability

The Oklahoma Good Samaritan Act serves to exempt rescuers from tort liability. As in every other state, the Oklahoma Good Samaritan statute aims to encourage good deeds on the part of Oklahoma citizens. The statute provides those who aid in emergencies with immunity from civil liability should something go wrong during an attempt to rescue the victim of an emergency.

The Oklahoma statute underwent a significant challenge recently, having been first enacted in 1890. In Jackson v. Mercy Health Center, Inc., the Oklahoma Supreme Court held that when an individual has entered the premises of a hospital or similar health care facility for purposes other than to receive medical treatment and later receives emergency care from hospital employees, he or she is not considered a patient but a visitor. This status exempts the hospital from liability for tort actions arising from emergency care rendered under title 76, section 5 of the Oklahoma Statutes.

The plaintiff in Jackson sought damages for injuries he received after members of the hospital staff tried to assist him when he fainted watching his wife give birth. Because the plaintiff was merely a visitor and not seeking treatment at the hospital, the hospital did not owe him a duty of care. Instead, the aid rendered by the hospital staff fell under the Oklahoma Good Samaritan Act and the hospital was thereby relieved of liability.

Although application of the Oklahoma Good Samaritan Act is rare, the act is in full force and serves its purpose. Because of this act, a would-be rescuer does not have to fear litigation should his munificent rescue efforts fall short of success. The purpose of these laws is noble and the motivation behind them deserves praise. Laws like the Oklahoma Good Samaritan Act strike a balance between encouraging benevolent behavior and preserving personal liberties.

124. See supra note 52.
126. See 76 OKLA. STAT. § 5 (1991) (Oklahoma Good Samaritan or "Rescuer" law).
127. See id.
128. See id.
129. 864 P.2d 839 (Okla. 1993).
130. See id. at 845.
131. See id.
132. See id. at 844.
133. See id.
B. The Oklahoma Child Abuse Reporting and Prevention Act

In addition to the Good Samaritan Act, Oklahoma has effected the Child Abuse Reporting and Prevention Act which requires health care and child care professionals to report suspicions of child abuse or evidence of non-accidental injuries.\textsuperscript{135} However, the Oklahoma statute also contains a unique provision which seems to require reporting by anyone, not just professionals, who is in a position to encounter evidence of child abuse.\textsuperscript{136} This extra provision creates an unclear and uncommon duty because it so vaguely includes the at-large citizen under its reporting requirement. However, there does not appear to be any effort on the part of lawmakers to make the average citizen aware of this duty to report.

1. The Efficacy of Oklahoma's Child Abuse Reporting Statute

It is estimated that over 51,000 occurrences of child abuse were reported or referred to the Department of Human Services (DHS) in Oklahoma during 1997.\textsuperscript{137} Just under 48,400 of those cases were investigated and a little over 13,600 of the referred cases were confirmed.\textsuperscript{138} The number of referrals actually resulting from the reporting statute is neither documented nor ascertainable. However, on a national level, the number of child abuse cases reported has risen dramatically since the mid-1960s, when child abuse reporting statutes first took effect.\textsuperscript{139} Presumably, there is at least some correlation between the increase in reported child abuse and the codification of the duty to report.\textsuperscript{140}

Oklahoma has passed two separate statutes which together are known as the Oklahoma Child Abuse Reporting and Prevention Act.\textsuperscript{141} The first and principal section, found in title 10, section 7103 of the Oklahoma Statutes, contains most of the seven elements listed in Part III by designating who must report and how to go about reporting.\textsuperscript{142} The second section, section 7104, deals with reporting criminally inflicted injuries, including more than just child abuse,\textsuperscript{143} and limits the mandated reporters to health care providers and professionals.\textsuperscript{144}

\textsuperscript{136} See, e.g., id.
\textsuperscript{137} This information is based on fiscal year 1997 and was provided by the Oklahoma Department of Human Services, Child Protection Division.
\textsuperscript{138} These statistics were provided by the Oklahoma Department of Human Services, Child Protection Division.
\textsuperscript{139} See Vieth, supra note 112.
\textsuperscript{140} Other possible explanations include an increased number of child abuse cases, an increased awareness of child abuse, and an increase in the number of resources allocated by federal and local governments to document incidents of child abuse.
\textsuperscript{142} See id.
\textsuperscript{143} See id. Perhaps this provision serves to cover instances of injury resulting from criminal acts beyond the realm of "abuse," such as wounds caused by weapons or other forms of unlawful injuries caused by abusive behavior.
\textsuperscript{144} See, e.g., id. §§ 7103, 7104.
The Oklahoma child abuse reporting law conforms to the model by containing the seven required elements.\textsuperscript{145} However, the Oklahoma child abuse reporting statute contains an additional element.\textsuperscript{146} The Oklahoma law requires that professionals and

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\text{[e]very . . . other person} \text{ having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred.}\textsuperscript{147}
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This provision expands the duty beyond the customarily mandated health or child care professional and imposes the duty on anyone with "reason to believe" a child has suffered non-accidental injuries which may result from child abuse.\textsuperscript{148} This expansion of the duty to report child abuse is unorthodox,\textsuperscript{149} vague, and untested.\textsuperscript{150}

The aforementioned language raises several questions about the statute's overall effectiveness. How, for example, is the average citizen to know he or she is under a legal duty to report evidence of child abuse? Whereas members of the medical or child care community are reminded of this duty through their professional licensors, the average citizen receives no such reminder, nor even a primary notification of the law's existence. Of course, ignorance of the law is no excuse,\textsuperscript{151} but in the case of affirmative duties such as this affirmative duty to report, the state must at least make an effort to alert people of this duty before holding them subject to it. It is clear that the state makes an effort to inform the obligated professionals of their duty; the general public should likewise be informed.\textsuperscript{152}

Perhaps if the state is serious about imposing this requirement, notification could be achieved through advertising or mailing campaigns. The state wages similar

\textsuperscript{145} See supra text accompanying notes 115-17.
\textsuperscript{146} See, e.g., id. §§ 7103, 7104.
\textsuperscript{147} Id. § 7103(A)(1)(d) (emphasis supplied).
\textsuperscript{148} Id.
\textsuperscript{149} Upon a cursory review of similar statutes requiring reporting of evidence of child abuse, it appears that very few states contain a provision which compels anyone having reason to believe abuse has occurred to report it. The Florida statutory language reads "any person, including but not limited to," then provides a list of professionals, such as health care and child care professionals. Fla. Stat. § 39.201 (1998). This language also leaves open the possibility that anyone can be liable under the statute for a failure to report.
\textsuperscript{150} The only noteworthy case which has involved title 10, section 7103 of the Oklahoma Statutes is Capaldi v. State, 763 P.2d 117 (Okla. Crim. App. 1988), and it does not address part (A)(1)(d). Two other cases, Boyd v. State, 743 P.2d 674 (Okla. Crim. App. 1987), and Alexander v. State, 534 P.2d 1313 (Okla. Crim. App. 1975), make mention of the statute, but it is not the center of the litigation in either case.
\textsuperscript{151} See infra note 171.
campaigns for traffic laws and related prohibitions; it seems that the interest of the state in its children would be equally important and thus would merit similar efforts on the part of law enforcement agencies.

A second issue unanswered by this law is that the statute does not specify how much time a reporter has between the time the evidence of child abuse is recognized and the point at which the actual report is made. The statute specifies only that the reporter act "promptly." This aspect of the statute may be purposefully vague, but it could create a potentially nettlesome issue if the reporter delays action for any reason. For example, if an unreasonable delay results from a reporter's very ignorance of his duty, he may face criminal consequences for his ignorance. It is certain that the sooner DHS knows about a child abuse case, the better able the agency is to address the problem. However, without a clearer codification of the duty, the statute's efficacy remains in question.

Oklahoma's reporting statute has had its day in court only once. The Oklahoma Court of Criminal Appeals upheld the conviction of a state-employed nurse in Capaldi v. State for a violation of the Oklahoma Child Abuse Reporting statute. The nurse in Capaldi physically examined and nevertheless discharged a patient who, it was discovered upon later examination by his mother and a hospital, had sustained extensive bruises. The nurse had noticed the injuries but failed to report them to DHS, as the Oklahoma statute requires.

Capaldi is the only significant reported case which has tested Oklahoma's mandatory child abuse reporting statute. Unfortunately, it barely reveals any of the interesting aspects of the statute. As a textbook application of the statute, because the nurse clearly violated it by failing to report the evidence of abuse, it is interesting to consider what may happen if Oklahoma courts ever review a situation more complex than Capaldi.

For example, one question raised by the statute is whether a non-professional who has seen evidence of child abuse would be prosecuted. Those who might fall into this non-professional category, but who would have a foreseeable opportunity to see evidence of child abuse are, for example, a babysitter or a friend of the family. The statute seems to include such people in the "other person" language, but it is hard to imagine that the state would truly charge such a person with a violation of this law. The statute seems more squarely aimed at requiring reporting by health care or child care professionals rather than imposing the same mandate on the private citizen. If that aim is true, however, the question of why the Oklahoma Legislature included the "other person" language remains unanswered.

153. Id. §§ 7103(A)(1)(d), 7104.
154. As of the publication date of this comment, Capaldi has been the only significant challenge to Oklahoma's child abuse reporting statute. See Capaldi v. State, 763 P.2d 117 (Okla. Crim. App. 1988).
156. See id. at 118.
158. See id. § 7103(A)(1)(d).
159. Id.
2. Oklahoma's Existing Laws Are Significantly Different from Sherrice's Law

A question arises whether the Oklahoma Child Abuse Reporting statute could apply to one who witnesses the actual abuse of a child while it occurs. Although the statutory language does not expressly require witnesses of the actual abuse to report to DHS, it could be construed to include witnesses because they certainly would be in the best position to have reason to believe that the injuries inflicted were other than accidental. In contrast, considering the proposed bill's impetus, the goal of Sherrice's Law is specifically directed at eyewitnesses and endeavors to impose on them a duty to at least report what they have observed. The proposed law seeks to respond to a more time-sensitive situation than the existing child abuse reporting statutes. The public policy issue driving both laws, however, is the same. Each of these laws serves not only to protect just any endangered citizens, but to protect those citizens who need the most protection because they are the most vulnerable. Owing to both their physical helplessness and their political powerlessness, our children deserve utmost protection.

V. An Analysis of Sherrice's Law

Sherrice's Law, as proposed by Senator Boxer and Representative Lampson in September of 1998, will amend title 42 of the United States Code, section 5106a, titled "Child Abuse Prevention and Treatment and Adoption Reform." The amendment adds language to an existing statute requiring state compliance in order to receive federal funding. As proposed, the statute will require that each state's governor provide to the federal government an assurance that the state has enacted and enforces a law exacting criminal consequences against anyone over eighteen who witnesses and fails to report to a state or local government official incidents of sexual abuse. The statute was proposed in order to require that states enact and enforce the mandated reporting laws. If they do not, the grants that they receive for federal child abuse and neglect prevention and treatment programs will be discontinued.

A. Efficacy of Mandatory Reporting

Unlike the duty to assist laws, Sherrice's Law simply would require a duty to report. Citizens, like Cash, would not have to intervene in a violent situation; they would simply face a criminal sanction for failing to report the criminal act they had witnessed. Even though most current Good Samaritan statutes permit the waiver of

160. See id. §§ 7103, 7104.
161. The current statute only requires reporting of suspicions of child abuse; suggesting that the statute covers only cases wherein the abuse has occurred prior to the reporter's involvement.
162. See 10 OKLA. STAT. §§ 7103, 7104.
163. See supra note 2.
165. See id.
166. See id.
167. See id.
a would-be rescuer's duty when it may endanger the rescuer,\textsuperscript{168} the elimination of the danger element better serves to encourage third party action in situations involving violence. For example, an episode of child abuse or sexual abuse of children might subject a would-be rescuer to the unwelcome danger inherent in a situation involving a powerful aggressor. However, under the mandatory reporting laws, such as Sherrice's Law, the rescuer has only a silent duty and, upon reporting the crime, can leave the actual intervention to a professional, such as a law enforcement officer.\textsuperscript{169}

If one of the purposes of Sherrice's Law is to act as a deterrent, the law may not serve its purpose. First, the majority of people who will potentially face prosecution under Sherrice's Law would not be aware of the duty imposed by the law. The principle that ignorance of the law is no excuse still exists,\textsuperscript{170} but it is very probable that those who are most likely to be in a position to report sexual abuse are going to be most ignorant of their legal duty and thus not feel compelled to act. In this situation, ignorance of the law could be far more costly to society than the benefit of arresting the uninformed party.\textsuperscript{171} In other words, if part of the law's aim is to compel people who would not otherwise feel obligated to report crimes, then awareness of the law, and of the duty to report, is paramount. In a similar vein, the duty to assist statutes have enjoyed some recent popular recognition on network television.\textsuperscript{172} In the final episode of a popular sitcom, the use of a Good Samaritan law to incriminate the show's characters for their callousness seemed to poke fun at the absurdity of prosecuting unknowing parties under such laws.\textsuperscript{173}

A second reason that Sherrice's Law may not fully serve its deterrent purpose is that even if people are somehow aware of the criminalization of silently witnessing a vile crime, they may not be inclined to turn their friends over to the authorities. This reason is precisely the same reason that Cash cited for choosing to do nothing after witnessing the assault on Sherrice Iverson.\textsuperscript{174} The dilemma represented by Cash's situation is likely to recur if only because it is foreseeable that an unas-

\begin{footnotesize}
168. See supra notes 56-62 and accompanying text.
169. See S. 2452.
170. This well established doctrine dates back at least as far as Aristotle. See 8-9 ARISTOTLE, THE NICOMACHEAN ETHICS 147 (H. Rackham trans., rev. ed. 1934) ("[M]en are punished for offences committed through ignorance of some provision of the law which they ought to have known, and might have known without difficulty; and so in other cases where ignorance is held to be due to negligence, on the ground that the offender need not have been ignorant, as he could have taken the trouble to ascertain the facts.").
171. It is arguable that the "ignorance of the law is no excuse" principle was established for situations in which an act was punishable because of its inherent wrongfulness. Good Samaritan laws, and similar standards, serve more to encourage intervention and behavior which could prevent exacerbated circumstances than to punish.
172. Approximately 76.3 million viewers watched the final episode of Seinfeld, a widely popular sitcom, which aired on May 15, 1998. See Gary Levin, Much-Hyped "Seinfeld" Falls Short of Record, USA TODAY, May 18, 1998, at 4D. The final episode depicted its main characters tied up in a lawsuit for failing to offer assistance to an emergency victim, by violation of the Good Samaritan law in a Massachusetts town.
173. See id. The violation occurred in a jurisdiction foreign to the characters.
174. See 60 Minutes, supra note 3.
\end{footnotesize}
summing friend may find himself in the company of a criminally prone peer whom he does not wish to "rat on." This problem is not foreign to law enforcement, but because of the nature of a duty to assist or duty to report law, the goal of saving lives suffers when loyalty or peer pressure frustrates the statutory objective.

Certainly, however, deterrence is not the only motivation for the statute's implementation. The very impetus for the law is a desire to punish a bystander for his inaction where a simple call for help may have saved a life, indeed maybe even two lives. Many people would go so far as to argue that because of his inaction, Cash is equally guilty as Strohmeyer and that he deserves a similar punishment to prison. However, considering the penalties under the existing reporting and Good Samaritan statutes, the sanction under Sherrice's Law will likely carry only a misdemeanor classification, which would result in little more than a monetary fine. Though at first blush a mere fine may seem a minor punishment for the likes of Cash, this classification would serve to balance morality and liberty. The so-called "free moral agent," is thus permitted to choose his or her fate and not suffer too harsh a penalty for abiding by his own moral code.

B. Impact of Sherrice's Law

It is possible that Sherrice's Law will be a toothless attempt to bite down on the apparent increasing apathy among Americans toward violence. If the congressional effort to require states to enact an affirmative duty law is anything like the existing state legislation, the statute is a waste of government time and resources.

Callous indifference toward human life, however, like that exhibited by David Cash, endangers lives and destroys families and communities. If such impassivity can be punished, discouraged, or even stopped, then Sherrice's Law is worthwhile and the tragic death of young Sherrice may benefit society as a whole in the long term.

Many of today's advocates of civil liberties would consider this affirmative duty to act on another's behalf an infringement of liberty. However, as one commentator points out, our society already requires its citizens to care for the needy in the form of taxes which, through welfare programs, support the elderly, the disabled and the poor. The fact that abused children do not receive the full benefit of society's laws may result entirely from their lack of political power.

175. Theoretically, if Cash had caused his friend Strohmeyer to have been caught in the act before Sherrice Iverson had died, his penalty would have been significantly less severe and his life would not have been wasted in prison.
176. See, e.g., Booth & Willwerth, supra note 4.
177. The current law, as proposed, suggests neither punishment nor classification. The likelihood of a misdemeanor classification is based solely on existing reporting statutes. See, e.g., 10 OKLA. STAT. §§ 7103, 7104 (1991).
178. Every United States citizen is considered a "free moral agent," unless he or she is imprisoned or otherwise lawfully constrained. See, e.g., Landfield v. Cohen, 200 P.2d 149, 150 (Cal. Ct. App. 1948).
179. See infra text accompanying notes 194-204.
180. See Vieth, supra note 112, at 160.
181. See id.
It is difficult to anticipate the effect of Sherrice's Law on sexual abuse or crimes in general. The main reasons for this uncertainty are fivefold. The first is that the federal statute simply mandates that states implement the law in order to continue to receive federal funds for its Child Abuse and Neglect Treatment programs.\footnote{182} This type of legislation, while it has faced challenges for appearing unconstitutional, is a way for the federal government to control state lawmakers. These types of federal laws for such issues as speed limits and other traffic laws have thus far survived United States Supreme Court scrutiny.\footnote{183} However, these indirect federal mandates can pose a host of varying problems. For example, a state can choose to ignore the mandate and suffer the consequences by foregoing the funding.\footnote{184} In addition, such a federal mandate increases the potential for a constitutional challenge.\footnote{185}

Second, the statute does not suggest nor impose a criminal penalty.\footnote{186} The decision about an appropriate sanction is left to the states. Having not provided a minimum penalty, a state which opposes imposing an affirmative duty on its citizens could enact the statute as required for federal funding, yet assess a nominal fine or a state-authorized "slap on the wrist." A de minimis penalty would not accomplish the aim of Congress and would undermine the bill's purpose.

Third, given the lack of application of the current duty to assist and duty to report laws nationwide, the enactment of another such statutory requirement may have a correspondingly minimal effect on society.\footnote{187} The sparingly applied Good Samaritan statutes currently in effect may not attain much judicial attention because

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\footnote{182}{See S. 2452, 105th Cong. (1998).}

\footnote{183}{Despite numerous challenges (and eventual repeal in 1995), the nationally imposed 55-mile-per-hour speed limit laws, 23 U.S.C. § 154 (Supp. IV 1998), were consistently upheld by the courts. See People v. Austin, 443 N.E.2d 1107 (Ill. App. Ct. 1982) (holding that placement of conditions on state's receipt of federal funds by Congress, which established national speed limit to prevent wasting of fuel and jeopardizing of lives but which placed terms only upon allotment of federal funds for highway construction within state and left it to individual state to assess limit, was constitutional despite characterization of such action as bribery, and thus 55-mile-per-hour speed limit enforced against motorist was constitutional).}

\footnote{184}{Louisiana for many years technically complied with the national minimum drinking age, set by Congress in 23 U.S.C. § 158, yet the state was not imposing sanctions on retailers of alcoholic beverages, effectively setting its statewide drinking age at 18. The federal government eventually forced Louisiana to enforce the minimum drinking age and the new statute withstood judicial challenge in Manuel v. Louisiana, 677 So. 2d 116 (La. 1996). See Alyson L. Redman, Manuel v. Louisiana: The Louisiana Supreme Court Determines That Raising the Legal Drinking Age to Twenty-one Is Not Age Discrimination Under Louisiana's Equal Protection Clause, 71 Tul. L. Rev. 987 (1997).}

\footnote{185}{The Tenth Amendment of the United States Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONSTIT. amend. X. This type of law may face intense judicial scrutiny. So far, however, congressional imposition of a condition to require a state's passage of a particular law has been upheld by the courts. See, e.g., South Dakota v. Dole, 791 F.2d 628 (8th Cir. 1986), cert. granted, 479 U.S. 982, aff'd, 483 U.S. 203; Nevada v. Skinner, 884 F.2d 445 (9th Cir. 1989); Vermont v. Brinegar, 379 F. Supp. 606 (D. Vt. 1974); Manuel v. Louisiana, 677 So. 2d 116 (La. 1996).}

\footnote{186}{This likely was omitted to preempt any sort of constitutional challenge which may arise under the Tenth Amendment to the United States Constitution.}

\footnote{187}{See Pardun, supra note 42.}
of a general absence of violations or enforcement thereof. Similarly, one must hope that incidents like the one in the casino restroom are rare occurrences. Even if such incidents do occur, it is impossible to estimate their frequency. Thus, the applicability and usage of the proposed law is difficult to determine.

Fourth, the statute may be written too narrowly. As proposed, Sherrice's Law will punish witnesses of sexual abuse of children only for failing to report the crime. Conspicuously absent from the category of potential reporters are those who witness crimes of a sexual nature with adults as victims, such as rape. It also excludes crimes of a nonsexual nature of which children are victims, such as kidnapping. Although the principal intent of the statute is to protect children, it would not hinder the effect of the statute if it were more broadly drafted to include more categories of crimes. This goal could still be accomplished without enacting a general Good Samaritan law to punish any witness who fails to report any crime.

Finally, the purpose for the statute's enactment may be misguided. These types of laws are an attempt to codify a moral standard. Their existence serves to provide society with a type of moral guidance. Sherrice's Law has enjoyed support because of the outrage over one man's contemptible behavior and election not to act. That fact and the history of similar laws suggest that the purpose of a law like Sherrice's Law is merely symbolic and may therefore lack legislative merit.

C. Improving the Efficacy of Sherrice's Law

Despite the shortcomings of similar laws and their histories, with additional examination and some possible modifications, Sherrice's Law may prove to be a valuable piece of legislation. When contemplating passage of Sherrice's Law, Congress should take into account three principal considerations. First, a federally suggested or mandated minimum penalty may be an appropriate inclusion in the law. An indication as to the appropriate penalty will provide states with a guideline for how serious Congress believes the crime is, and will give states some notion of what will be required to enforce the statute. Without an idea about what kind of penalty the law should carry, or a guideline to prevent misapplication, a state may impose too lenient a penalty. In addition, a state which does not support the law may attach an insipid sanction in order to express its disagreement with the law and to protect its citizens from what it considers a pointless piece of federally mandated legislation.

Similarly, bearing complicity in mind, Congress should consider seeking the support of the states. Without genuine state support, laws like Sherrice's Law — enacted because of federal pressure — cannot be successful. Even if a state is obligated to pass the law to receive a federal grant, it is up to the state to enforce the law. Thus, a state which does not freely advocate a federally suggested law is in a position to weaken the law's effect in terms of enforcement.

188. See supra note 43. But see infra text accompanying note 207.
189. It seems unlikely that a state would impose an unreasonably harsh penalty for a violation of such a statute.
190. This occurred for many years in Louisiana. Local jurisdictions which did not support the
enjoyed strong advocacy from citizens of California and members of Congress, Sherrice's Law is not without its loyal support. Without a doubt, when people hear the story of Cash's culpable passivity, they commonly assert a desire to see such insensitivity punished and express their disbelief that there is not already a penalty for such behavior. However, the states must be willing to expend their resources to enforce such a law in order for it to be successful. Congress should ensure that the law can flourish and enjoy support at the state level before enacting it.

Finally, the authors of the bill must define the essential terms provided in the statutory language. For example, there must be a definition of sexual abuse. This definition could be unique to this statute or in the form of a reference to another provision or statutory definition. The statute should also contain a clear definition of the term "witness." As proposed, the bill provides for a duty to report to be imposed on any individual who "has witnessed another individual in the State engaging in sexual abuse of a child." The term "witness" creates ambiguity because there is no specification as to whether the abuse must be eyewitnessed or if an individual can witness sexual abuse by hearing it through, for instance, a shared apartment wall. Without these essential clarifications, the proposed statute will be another source of congressionally imposed confusion leading to judicially inconsistent interpretation.

**D. Does Sherrice's Law Infringe on Individual Liberties?**

There have been very few judicial examinations of the existing duty to assist and duty to report statutes. To date, there have been no successful constitutional challenges to the duty to assist laws. The fact that several such laws have existed undisturbed for a long period of time may be testimony to their constitutional soundness. However, the endurance of these laws does not necessarily mean that they are widely accepted, nor does it indicate that their constitutionality is certain. Moreover, the enduring presence of such laws does not guarantee that Sherrice's Law will escape heated criticism. In fact, the necessity and legality of

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federally imposed minimum drinking age turned a blind eye to violations of the law, which was in effect in Louisiana but hardly enforced. See supra note 185.


193. See id.

194. See supra notes 83-98, 147-58 and accompanying text.

195. As of the publication date of this comment, the only known significant constitutional challenge to a Good Samaritan duty to assist statute in the United States is State v. LaPlante, 521 N.W.2d 448 (Wis. Ct. App. 1994). See supra notes 87-90 and accompanying text.
these laws are bitterly debated.\textsuperscript{196} Most of the arguments against these laws are fear-based citations to the jeopardy of personal freedoms.\textsuperscript{197}

For example, one of the principal arguments against this type of law is that it imposes a penalty for an omission, or failure to act.\textsuperscript{198} The concept of punishing an omission is hardly unfamiliar to the law. It is a less common reason for sanction, but it exists. For example, in everyday terms, if one fails to pay taxes or to register a vehicle, he or she can be criminally prosecuted for failing to act according to the requirements of the law.\textsuperscript{199} Individual omissions have always been as punishable as if they are commissions.

Another argument against these laws is that they encroach on individual rights.\textsuperscript{200} It is true that one of the virtues of being an American is that we enjoy certain inalienable rights,\textsuperscript{201} but these very rights are established to aid in life, liberty and the pursuit of happiness.\textsuperscript{202} An important way in which these ideals are best achieved is through neighborly behavior. This concept is present in the law, and American citizens, even if begrudgingly, have long adhered to this principle and benefit from it. Our welfare system and our very system of government aims to provide society with aid and assistance where it is needed by channeling resources to benefit those in need.\textsuperscript{203} If these requirements restrain the rights and liberties of American citizens, the restraint is minimal and the benefit outweighs the cost. What is more, the "restraint" is aimed at assisting those in need as one would like to be assisted when he or she is one day similarly situated.\textsuperscript{204}

A third argument leveled against Good Samaritan duty and duty to assist laws is that they are unconstitutionally vague. This argument was unsuccessful in Wisconsin and lacks merit generally.\textsuperscript{205} Furthermore, when deciding whether a law is unconstitutionally vague, courts often look to Connally v. General Construction Co.\textsuperscript{206} The Connally Court held that if a person must guess at a statute's meaning and there is potential for disagreement about its application, then due process of law is violated because the statute is unconstitutionally vague.\textsuperscript{207}


\textsuperscript{197} See, e.g., Pardun, supra note 42, at 607.

\textsuperscript{198} See id. at 604.

\textsuperscript{199} The duty to pay taxes is essentially constitutionally created. However, criminal penalties (usually in the form of a misdemeanor fine) for failing to register one's vehicle, etc. are state-imposed.

\textsuperscript{200} See, e.g., Pardun, supra note 42, at 604.

\textsuperscript{201} See The DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

\textsuperscript{202} See id.

\textsuperscript{203} See Vieth, supra note 112.

\textsuperscript{204} The Golden Rule is a biblically based ideal of most Western civilizations: "Do unto others as you would have them do to you." \textit{Luke} 6:31.

\textsuperscript{205} See LaPlante, 521 N.W.2d 448 (Wis. Ct. App. 1994).

\textsuperscript{206} 269 U.S. 385 (1926).

\textsuperscript{207} See id. For a discussion of the unconstitutionality of vague statutes, see Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972). The Court stated in Grayned that [v]ague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of
It is extremely unlikely that anyone should have to guess at the meaning or application of Sherrice's Law and its state-level counterparts. Even in its most primitive form, it is a clear statute within the Connally definition because there is little room for conflict about its application. Moreover, Sherrice's Law has a clear and noble purpose: to protect America's youth.

It seems almost callously indifferent to regard a law requiring a witness to act in an emergency situation an infringement of personal liberty. If it will infringe one man's freedom to require him to act when he sees wrongdoing and perhaps save a human life, that liberty is justifiably restrained.

**VI. Conclusion**

Sherrice's Law fills a gap which currently exists in the law. The proposed law even fills a void in the three states that have Good Samaritan duty to assist statutes and child abuse reporting statutes.\(^{208}\) The duty to assist statute covers emergency situations; the child abuse reporting statute covers after-the-fact reporting of child abuse; and Sherrice's Law would cover any incidents of sexual abuse, including those situations which may not technically be considered an emergency.\(^{209}\)

Should Congress enact Sherrice's Law, Oklahoma, like other states and their citizens, would benefit and would not experience adverse effects. Existing law in Oklahoma does not provide the beneficial aspects Sherrice's Law would provide to Oklahomans. Neither Oklahoma's child abuse reporting statute nor Oklahoma's rescuer liability statute addresses the same kind of situation as Sherrice's Law. The Oklahoma Legislature would do well to heed the call of Congress and enact a statute to comply with the federal version of Sherrice's Law and thus continue to receive federal funding. Even if the federal statute does not overcome congressional scrutiny, it would be commendable for Oklahoma to lead the way in bridging the gap between the traditional Good Samaritan law and child abuse reporting statutes by enacting a sexual abuse reporting law like Sherrice's Law.

Sherrice's Law, if enacted, would make good law. This statute represents a departure from an established trend in American law which illustrated a historical aversion to affirmatively imposed moral duties. Perhaps it is time for that aversion to subside. Almost as if he were speaking to this issue, Martin Luther King, Jr.,

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ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

*Id.*

208. For a discussion of the Minnesota child abuse reporting law, see Vieth, *supra* note 112.

209. An example of non-emergency sexual abuse of a child could involve a consensual relationship between a minor and a parent or other person wherein sexual abuse was occurring, but not in a violent manner, like that witnessed by David Cash.
proclaimed, "Morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless."210

The natural fear is that Sherrice's Law will be more like the relatively unsuccessful American Good Samaritan statutes rather than the more effectively used child abuse reporting statutes. The reality is that Sherrice's Law will probably fall somewhere in between. One of the sad realities of the success of the nation's child abuse reporting statutes is that there is a great deal of child abuse occurring in our nation.211 Hence, there is an abundance of evidence of child abuse in our nation which needs to be reported. Sherrice's Law, like the child abuse reporting statutes, would serve to curb this trend.

On the other hand, one must hope that there are relatively few instances where a passerby, a bystander or a witness to an emergency situation, like Cash, will impassively watch the emergency develop and the victim suffer without taking some form of action.212 Following this apparent pattern, one can hope that there will be few instances wherein a witness observes sexual abuse and does nothing, in violation of Sherrice's Law. However, if in the instances where the law can be enforced and a life can be saved, then the law will have served its purpose and will be a much needed tool in the prevention of crimes against our children. There is certainly at least one crime that could have been prevented, and a life saved, had David Cash felt an obligation, legal or otherwise, to save Sherrice Iverson.

Justin T. King


211. The evidence is most probably significantly outnumbered by the number of incidents of child abuse which are unreported and forever without notice.

212. It is assumed from the lack of application of, in the case of Vermont, a 30-year-old concept, that part of the reason is that there are few instances in our society of callous passivity which could lead to prosecution under these statutes.