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Comment

Sherrice Iverson Act: Duty to Report Child Abuse and Neglect

I. Introduction

Question: "Teacher, what must I do to inherit eternal life?"¹

Jesus' Response: "What is written in the law?"²

Answer: "You shall love . . . your neighbor as yourself."³

Jesus' Response: "You have answered correctly; do this and you will live."⁴

Question: "And who is my neighbor?"⁵

Jesus' Response: "A man fell victim to robbers They stripped and beat him and went off leaving him half-dead."⁶ A priest and a Levite saw the man, but passed him on the opposite side of the road.⁷ "But a Samaritan traveler who came upon him was moved with compassion at the sight."⁸ He treated his wounds and provided for his care.⁹ "Which of these three . . . was [a] neighbor to the robbers' victim?"¹⁰

Response: "The one who treated him with mercy."¹¹

Jesus' Response: "Go and do likewise."¹²

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1. Luke 10:25 (Saint Joseph).
 2. *Id.* at 10:26.
 3. *Id.* at 10:27.
 4. *Id.* at 10:28.
 5. *Id.* at 10:29.
 6. Luke 10:30.
 7. *See id.* at 10:31-32.
 8. *Id.* at 10:33.
 9. *See id.* at 10:34-35.
 10. *Id.* at 10:36.
 11. Luke 10:37.
 12. *Id.* at 10:37.

Although from the beginning of time individuals were given the responsibility of protecting their neighbors, only in recent times has the United States decided to impose criminal penalties for a failure to do so.¹³ Many commentators, and probably most of the American public, feel that forcing an individual to actually aid another in need of help is too extreme of a burden to impose on individuals living in a democratic society.¹⁴ However, there is no logically similar argument against requiring an individual to notify the proper authorities that another is in need of help. Where people are required by law to report a crime of which they have knowledge, the burden on that individual is not as heavy as it is when a person is legally required to give aid to those in need. Regardless of the burden, requiring someone to be a Good Samaritan by simply reporting a crime to the proper authorities could be the difference between life and death for the crime victim. A little girl could still be alive today if duty to report legislation existed, or at the very minimum, her family could have justice.¹⁵

Sherrice Iverson had one last chance for help, for someone to save her from the horrific ordeal that began as a game.¹⁶ Someone that had the potential to be little Sherrice's hero was really her greatest and most crucial disappointment. David Cash, Jr., her last chance, did not save her; he did not even summon help.¹⁷ "[H]e watched part of the assault by standing on the toilet seat in an adjacent stall, he heard [his friend, Jeremy] Strohmeyer threaten to kill the girl if she didn't shut up and then, with a callousness that is unimaginable, he walked outside and waited for his friend."¹⁸ Although morally reprehensible, his failure to summon authorities is not a crime.¹⁹ It is not legally punishable at all.

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

14. See *id.*

15. See Dan Reed, *Experts Warn About Impact of Proposed Good Samaritan Laws Some Fear Idea May Create More Legal Problems Than It Would Solve*, THE DALLAS MORNING NEWS, Sept. 6, 1998, at 44A.

16. See Steve Wilson, *Right Law Would Force Society To Do The Right Thing*, ARIZ. REP., Sept. 2, 1998, at A2.

17. See *Morality vs. Legality*, ARIZ. DAILY STAR, Sept. 12, 1998, at 16A.

18. *Id.*

19. See *id.*

It is disturbing that a human being in our society could watch this atrocious crime being committed against a seven-year-old girl and take no action. Mr. Cash watched as his friend's hand muffled Sherrice's screams of terror, and simply walked away.²⁰ "We have a . . . weak legal system which doesn't understand that crimes of omission can be in the same ballpark of crimes of commission. The absence of [G]ood Samaritan laws is in a way helping people evade accountability."²¹ All that society asks is that people report a crime to the proper authorities, not that they risk life and limb to save an innocent and helpless child.

Short of being shunned by society, there is no way to punish Mr. Cash for his inhumane behavior.²² Instead, he has gained celebrity status and has been permitted to revel in his new-found publicity.²³ Our society should be protecting the future of our children. We should make Sherrice Iverson's short, innocent life count. It is too late for Sherrice, who had her life brutally stolen, but we should not let her death be in vain.

Part II of this Note will comprise a brief overview of the earliest variation of the duty to report crime, misprision of felony. In addition, it will entail a discussion of the traditional arguments against the enacting of Good Samaritan legislation, namely the value of autonomy, the monetary and non-monetary costs, law enforcement's purpose and need becoming moot, the danger of vagueness and overbreadth, and the fear of retaliation. Part II will also illustrate the duty to report legislation that has been recently passed and the few cases that have been decided under that legislation. This Part will introduce the Sherrice Iverson case, which prompted the legislation that is the subject of this Note. Part III will consist of the proposed legislation in Sherrice Iverson's honor. Finally, Part IV will contain an analysis of the Sherrice Iverson Act, discussing its

20. See Wilson, *supra* note 16, at A2.

21. Reed, *supra* note 15, at 44A (quoting Curtis Hancock, co-author of *How Should I Live?* and a professor of philosophy at Rockhurst College in Kansas City, MO).

22. See Wilson, *supra* note 16, at A2.

23. See Kristina M. Knapcik, *Unlike in Nevada, Witnesses Here Face Law Wisconsinites Have Legal Duty to Help Crime Victims; Casino Killer's Friend Didn't*, MILWAUKEE J. SENTINEL, Sept. 9, 1998, at 7; see also *Morality vs. Legality*, *supra* note 17, at 16A.

major strengths and weaknesses based on the traditional arguments against such legislation.

II. Background

A. *The Duty to Report - Misprision of Felony*

The duty to "raise the 'hue and cry' and report felonies to authorities,"²⁴ was a basic principle of "Anglo-Saxon law at least as early as the 13th century."²⁵ At common law, misprision of felony was "the concealment of a felony of which a man knows, but never assented to."²⁶ "The common law elements of the crime were (1) knowledge of the felony, (2) a reasonable opportunity to disclose the felony without harm, and (3) failure to report the felony."²⁷ Thus, even at common law, individuals displayed the callousness that required courts to assume the responsibility of mandating common sense. That is, when an individual observes or has knowledge that a crime is being committed against another individual, they should notify the proper authorities.

Although the United States does not, as a whole, recognize the common law offense of misprision of felony as a crime,²⁸ the New Jersey Supreme Court upheld the only misprision of felony conviction in the United States.²⁹ In an 1878 case, *State v. Hann*,³⁰ the defendant was convicted for failure to report a murder.³¹ He was convicted under a section of the Crimes Act that stated:

24. *Roberts v. United States*, 445 U.S. 552, 557 (1980) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 696 (1972)).

25. *Roberts*, 445 U.S. at 557 (citing 2 W. HOLDSWORTH, *HISTORY OF ENGLISH LAW* 101-02 (3d ed. 1927)).

26. Yeager, *supra* note 13, at 30 (quoting 4 William Blackstone, *Commentaries on the Laws of England* *121).

27. *Id.* (citing WAYNE R. LAFAYE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* § 6.9, at 600-01 & n.53 (2d ed. 1986)).

28. See WAYNE R. LAFAYE & AUSTIN W. SCOTT, JR., *CRIMINAL LAW* § 6.9, at 600-01 (2d ed. 1986) (Justice John Marshall wrote: "[I]t may be the duty of a citizen to accuse every offender, and to proclaim every offense which comes to his knowledge; but the law which would punish him in every case for not performing this duty is too harsh for man." (quoting *Marbury v. Brooks*, 20 U.S. (7 Wheat.) 556, 575-76 (1822) (dictum))).

29. *See State v. Hann*, 40 N.J.L. 228 (N.J. Sup. Ct. 1878).

30. 40 N.J.L. 228.

31. *See Hann*, 40 N.J.L. at 229.

[I]f any person shall have knowledge of the actual commission of murder, or certain other specified crimes, and shall conceal, and not as soon as may be, disclose and make known the same to some one of the justices of the Supreme Court, or one of the justices of the peace, such person shall be guilty of a misdemeanor, and, on conviction, shall be subject to a certain punishment.³²

In response to the defendant's appeal that he was being charged as an accomplice, the court stated that he was not since "all that he did was to see the offence committed and to remain silent."³³ The New Jersey Supreme Court, by distinguishing the role of an accomplice from that of a bystander, illustrated the validity of Good Samaritan legislation by upholding the defendant's conviction under the guise of an accomplice, instead of utilizing the misprision of felony law. "To conceal his knowledge of such an act, and to remain passive and silent was, at the common law, a misprision of felony, and which offence has been . . . specialized and defined."³⁴ The court upheld the defendant's conviction of misprision of felony.³⁵ Since the *Hann* case, over 100 years have passed without another state court upholding a misprision of felony conviction.³⁶

In 1909, Congress enacted a misprision of felony statute,³⁷ which states:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than 3 years, or both.³⁸

Although this statute is on the books, the federal courts have interpreted this statute as requiring active concealment of the felony, that "[t]he mere failure to report a felony is not sufficient

32. *Id.* at 229 (citing Revised Crimes Act § 21, N.J. Rev. 1877, at 230 (repealed 1898)).

33. *Id.* at 229.

34. *Hann*, 40 N.J.L. at 229.

35. *See id.* at 229.

36. *See* Lionel H. Frankel, *Criminal Omissions: A Legal Microcosm*, 11 WAYNE L. REV. 367, 417 n.170 (1965).

37. *See* 18 U.S.C. § 4 (1909).

38. *Id.*

to constitute a violation of 18 U.S.C.A. § 4.”³⁹ Actually, the statutory language states that whoever “conceals *and* does not . . . make known” the commission of a felony, is guilty of misprision of felony.⁴⁰ Therefore, the courts’ interpretation of this law is accurate according to the language chosen by Congress. Thus, it is the legislature’s role to change the “and” to “or” if the legislative intent was to follow the common law and not to require active concealment. As the statute stands, simply failing to report a felony is insufficient to charge an individual with a violation of the misprision of felony statute.⁴¹ “Although the term ‘misprision of felony’ now has an archaic ring, gross indifference to the duty to report known criminal behavior remains a badge of irresponsible citizenship.”⁴²

Many arguments have been posited against duty to report legislation, such as interference with personal autonomy,⁴³ the monetary and non-monetary costs of enforcing duty to report legislation,⁴⁴ the idea that it is law enforcement’s job to investigate criminal activity,⁴⁵ the danger of vagueness and overbreadth of such legislation,⁴⁶ and the fear of retaliation.⁴⁷

B. *The Traditional Arguments Against Good Samaritan Legislation*

1. *Autonomy*

In a democratic society, the basic and most obvious argument against forcing people to help others is that such a law will interfere with an individual’s freedom and privacy.⁴⁸ People do not want to be told what to do, so in general, laws do not usually mandate action. For example, in *Roberts v. United*

39. *United States v. Johnson*, 546 F.2d 1225, 1227 (5th Cir. 1977) (citing *Lancey v. United States*, 356 F.2d 407 (9th Cir.) cert. denied, 385 U.S. 922 (1966)).

40. 18 U.S.C. § 4 (1909) (emphasis added).

41. *See id.*

42. *Roberts*, 445 U.S. at 558.

43. *See Yeager*, *supra* note 13, at 1-2.

44. *See John T. Pardun*, Comment, *Good Samaritan Laws: A Global Perspective*, 20 LOY. L.A. INT’L & COMP. L.J. 591 (1998); *see also* Jack Wenik, Note, *Forcing Bystander To Get Involved: Case For Statute Requiring Witnesses To Report Crime*, 94 YALE L.J. 1787, 1795 (1985).

45. *See Wenik*, *supra* note 44, at 1795.

46. *See id.*

47. *See id.* at 1793-1800.

48. *See Yeager*, *supra* note 13, at 2.

States,⁴⁹ the district court gave the defendant a longer sentence when he failed to identify his drug suppliers.⁵⁰ The Supreme Court affirmed his sentence stating that the deeply rooted social obligation to report known criminal behavior is not diminished when the witness to the crime is involved in illegal activities, unless his silence is constitutionally protected by the Fifth Amendment privilege against self-incrimination.⁵¹ The Court also stated that a criminal defendant is no less obligated than any other citizen to assist law enforcement.⁵²

However, Justice Marshall, in his dissent, disagreed with the Court's conclusion that the defendant had to become an informer.⁵³ Justice Marshall reasoned:

American society has always approved those who own up to their wrongdoing and vow to do better, just as it has admired those who come to the aid of the victims of criminal conduct. But our admiration of those who inform on others has never been as unambiguous as the majority suggests. The countervailing social values of loyalty and personal privacy have presented [sic] us from imposing on the citizenry at large a duty to join in the business of crime detection. If the Court's view of social mores were accurate, it would be hard to understand how terms such as "stool pigeon," "snitch," "squealer," and "tattletale" have come to be the common description of those who engage in such behavior.⁵⁴

Opponents of the duty to report legislation argue that it should not be a crime to decline to be a "tattletale," in essence, "making a felon out of someone who thinks maybe his neighbor is spanking a child too hard but doesn't report it."⁵⁵ Also, "[w]hat if you do report it and it doesn't pan out? You still have to live there. How much of a burden can we put on ordinary citizens to put their noses in other people's business?"⁵⁶ Justice Marshall's reaction is illustrative of the basic human desire to be responsible for taking whatever action is deemed appropriate by that par-

49. 445 U.S. 552 (1980).

50. *See id.* at 553-54.

51. *See id.* at 558.

52. *See id.*

53. *See id.* at 569.

54. *Roberts*, 445 U.S. at 569-70 (Marshall, J., dissenting).

55. Caren Benjamin, *Lawyers Say Care Needed In Writing Good Samaritan Law*, LAS VEGAS REV. J., Sept. 13, 1998, at 1B.

56. *Id.* (quoting Richard Perkins, Democratic Assemblyman).

ticular individual, and not to be forced by the law to take a certain action.

2. Cost

The potential expense of investigating, arresting, and adjudicating violators of these laws is another drawback of Good Samaritan legislation.⁵⁷ Investigation will be extremely time consuming because of the inherent difficulty in ascertaining who, if anyone, violated this type of law. Adjudicating violators will be difficult, especially if the individual does not share his observations with others. Basically, whether or not an individual is found guilty of violating Good Samaritan legislation depends on who that individual told and/or if another individual knew the suspected violator observed the crime and took no affirmative action to report it.

There is also the expense that could plausibly be incurred in investigating false reports of crimes, which could reach alarming rates.⁵⁸ There is the likelihood that a vengeful person would falsely report that he witnessed the commission of a crime, when, in fact, no crime was being committed. Many are concerned that the high costs of investigating these reports, false or accurate, will take away from the investigation of more serious crimes.⁵⁹

In addition, the non-monetary cost of imposing a duty on average, untrained citizens to intervene in a criminal emergency situation creates a grave risk to both the intervening Samaritan and the victim.⁶⁰ Law enforcement officials, especially police officers, must complete various training programs that provide them with the skills that are determined as necessary to properly carry out their duties. In essence, these Good Samaritan laws require citizens to perform some of these duties without the requisite training.⁶¹ The average citizen has little, if any, police training.⁶² There is a high cost involved in requir-

57. See Pardun, *supra* note 44, at 605.

58. See *id.*

59. See *id.*

60. See Wenik, *supra* note 44, at 1795.

61. See *id.*

62. See *id.*

ing bystanders to intervene.⁶³ The possible risks include the bystander harming himself, others, or the victim.⁶⁴ In addition, intervening bystanders are not bound by guidelines to ensure that evidence is not destroyed or that the rights of the criminal defendant are not violated.⁶⁵ For instance, if reports were made anonymously, the defendants' Sixth Amendment right to confront witnesses against them would be violated.⁶⁶

Another danger or cost associated with duty to report legislation is that it would, in effect, do away with the defense of mere presence, which states that it is not a crime to simply be present when a crime is being committed.⁶⁷

3. *It's Law Enforcement's Job*

In addition to the fact that duty to report legislation may hinder law enforcement in performing their duties, many feel that the purpose of law enforcement would be thwarted if average citizens were required to perform a great part of law enforcement's job.⁶⁸

As mentioned, Good Samaritan laws allocate certain duties traditionally associated with police officers and other law enforcement officers to the general public. Psychological "diffusion of responsibility may be more pronounced in the area of crime reporting because bystanders tend to place the responsibility for the control of criminal activity on specific groups in the population, such as the police."⁶⁹ The average citizen depends on law enforcement to investigate crimes and catch criminals. However, Good Samaritan legislation imposes on the average citizen the duty to either aid someone in need of assistance or to report a crime. Basically, Good Samaritan legislation imposes the duty to catch criminals on ordinary citizens. If the general

63. *See id.*

64. *See id.* at 1794 n.70 (citing Ted L. Huston et al., *Bystander Intervention Into Crime: A Study Based on Naturally-Occurring Episodes*, SOC. PSYCHOL. Q., Mar. 1981, at 14).

65. *See Wenik, supra* note 44, at 1795-96.

66. *See* U.S. CONST. amend. VI.

67. *See Benjamin, supra* note 55, at 1B.

68. *See Wenik, supra* note 44, at 1795-96.

69. *Id.* at 1787.

population was forced to intervene to aid a crime victim, the specialized purpose of law enforcement would deteriorate.⁷⁰

In addition, one reason that law enforcement was created was to prevent vigilante justice.⁷¹ Modern society does not want individuals to take the law into their own hands. That situation is common enough without lending support to it under the law.⁷²

4. *Vagueness and Overbreadth*

A major problem with Good Samaritan legislation is that these types of laws are often deemed vague or overbroad.⁷³ "[A]ny Good Samaritan-type law would cover too many problematic cases. 'It is very difficult to craft a law which has the effect we want and isn't capable of being misapplied.'"⁷⁴ This indicates that lawmakers must use great care when they are creating Good Samaritan laws, because if they are found to be vague or overbroad they will be struck down as unconstitutional.⁷⁵

A typical effect of a vague or overbroad Good Samaritan law is selective prosecution.⁷⁶ Law enforcement has limited means to discover who has violated a duty to report law, since it requires that a Good Samaritan report both the primary offense and that another witness observed the primary offense and did not report it.⁷⁷ It is "difficult to envision a law that would be precisely enough drawn to only cover the most righteous situation. It would be a tremendous risk to expos[e] innocent bystanders to criminal liability."⁷⁸

The inherent difficulty of not having a method to determine exactly who has violated the law also arises in duty to rescue

70. *See id.* at 1793-97.

71. *See id.* at 1795-97.

72. *See id.*

73. *See* Wenik, *supra* note 44, at 1792-1800.

74. Maura Dolan, 'Good Samaritan' Laws Are Hard to Enact, Experts Say Aid: Outrage Over Inaction of Strohmeier Friend Sparks Calls for Bills. But Existing Legislation Has Limited Success, L.A. TIMES, Sept. 9, 1998, at A1 (quoting Arthur Leavens, a professor at Western New England College School of Law).

75. *See* Reed, *supra* note 15, at 44A.

76. *See* Wilson, *supra* note 16, at A2.

77. *See* Benjamin, *supra* note 55, at 1B.

78. Reed, *supra* note 15, at 44A (quoting Larry Brown, executive director of the California District Attorneys Association).

Good Samaritan legislation.⁷⁹ Those individuals who are charged with a violation of a Good Samaritan law will "in all likelihood be guilty of the most egregious violations brought to the attention of the police by members of the public."⁸⁰ Therefore, there is an inherent unfairness in this type of legislation because many violations will go undetected and unpunished.

For example, assume the following duty to report law is in place in State X: Any person who knows that a crime is being committed and has the means to notify law enforcement without harming him/herself shall do so as soon as reasonably possible. In State X, a woman is in her apartment building and hears screams from the street outside. She rushes to the window and sees a woman being brutally stabbed by a man. She chooses not to summon help, clearly a violation of State X's duty to report law, but it is unlikely that the police will ever discover this. This situation demonstrates the need for Good Samaritan laws that set forth clear standards to determine who in fact has violated them and whether or not to prosecute suspected violators.⁸¹

5. *Retaliation*

Although retaliation does not frequently occur, there are instances where forcing an individual to simply report a crime is likely to expose that individual to physical danger.⁸²

In a disturbing case,⁸³ which is an extreme example of the fear of retaliation, the police repeatedly ignored, or underestimated the seriousness of, repeated telephone calls from two women who insisted that the woman living downstairs was being robbed, beaten, and raped.⁸⁴ The two women placed calls to the police and, later, believing that the police entered the house, they called down to the woman in order to alert her that help was on the way.⁸⁵ Unfortunately, the police were not in the house and the women's reassurances alerted the assailants to

79. See Larry C. Wilson, *The Defense of Others - Criminal Law and the Good Samaritan*, 33 MCGILL L.J. 756 (1988).

80. Wenik, *supra* note 44, at 1804-05.

81. See Reed, *supra* note 15, at 44A.

82. See Benjamin, *supra* note 55, at 1B.

83. Warren v. District of Columbia, 444 A.2d 1 (D.C. 1981).

84. See *id.*

85. See *id.*

their presence.⁸⁶ The two men committing these crimes retaliated against the two Good Samaritans by beating, raping, and robbing all three women.⁸⁷

Notwithstanding these arguments against the enactment of Good Samaritan laws, at least four states have enacted duty to aid laws and at least six states have passed duty to report laws.

C. *Good Samaritan Laws - Especially Duty to Report Laws Today*

Although Good Samaritan legislation is difficult to enact, a few states have enacted duty to aid legislation.⁸⁸ The most stringent of the duty to act laws provides for a criminal penalty of not more than six months in jail or a fine of up to \$500, making a violation of this law a petty misdemeanor.⁸⁹ However, the scales also tip in the opposite direction. The most lenient of these laws imposes a civil penalty of a fine of not more than \$200 on violators.⁹⁰ Regardless of the penalties and characterizations of these laws as civil or criminal, the most important and prominent feature of duty to act legislation, and in fact, all Good Samaritan legislation, is that these laws are "largely dormant."⁹¹ The legislature can pass numerous Good Samaritan laws, but these laws are not protecting anyone if violators are not being prosecuted.

Seemingly easier to pass, duty to report legislation has been enacted in at least six states.⁹² All six of these states have made the failure to report a crime punishable by criminal penalties.⁹³

86. *See id.*

87. *See Warren*, 444 A.2d at 1.

88. *See* MINN. STAT. ANN. § 604A.01 (West Supp. 2000); R.I. GEN. LAWS § 11-56-1 (1994); VT. STAT. ANN. tit.12, § 519(a) (1973); WIS. STAT. ANN. § 940.34(2)(a) (West Supp. 1999).

89. *See* R.I. GEN. LAWS § 11-56-1.

90. *See* MINN. STAT. ANN. § 609.02.4(a) (West Supp. 2000).

91. Pardun, *supra* note 44, at 606.

92. *See* FLA. STAT. ANN. § 794.027 (West Supp. 2000); MASS. GEN. LAWS ch. 38, § 3 (West 1999); OHIO REV. CODE ANN. § 2921.22 (Anderson 1999); R.I. GEN. LAWS § 11-1-5.1 (1994); WASH. REV. CODE ANN. § 9.69.100 (West 1998); WIS. STAT. ANN. § 940.34 (West Supp. 2000).

93. *See* FLA. STAT. ANN. § 794.027 (West Supp. 2000); MASS. GEN. LAWS ch. 38, § 3 (West 1999); OHIO REV. CODE ANN. § 2921.22 (Anderson 1999); R.I. GEN. LAWS

The most severe punishment for a violation of one of the duty to report statutes is in effect in Washington.⁹⁴ The statute sets forth specific categories of offenses when an individual will have a duty to report.⁹⁵ Any witness to a crime that falls within one of the categories must call certain enumerated officials as soon as reasonably possible.⁹⁶ A violation is punishable by a term of imprisonment of not more than one year or a fine of not more than \$5,000.⁹⁷

In Florida, the legislature has imposed a duty to report a sexual battery.⁹⁸ The statute lists certain criteria that must be satisfied before a witness can be found guilty of a violation. For example, the witness: i) must have reasonable grounds to believe that she observed a sexual battery;⁹⁹ ii) must have the present ability to seek assistance by immediately reporting the offense;¹⁰⁰ iii) must fail to seek assistance;¹⁰¹ and iv) would not be exposed to any threat of physical violence.¹⁰² The violation of this statute is a misdemeanor, punishable by a term of imprisonment of not more than one year¹⁰³ or a fine of not more than \$1,000.¹⁰⁴

Another duty to report law, adopted in Wisconsin, makes it a crime for a person not to call for assistance or provide assistance to a victim when he knows a crime is being committed and a victim is exposed to bodily harm.¹⁰⁵ Unlicensed private security persons have a duty to report a crime that is being committed or has been committed, if they have a reasonable basis for that belief.¹⁰⁶ This law heightens the penalty if the witness is licensed as a private detective or granted a private security per-

§ 11-1-5.1 (1994); WASH. REV. CODE ANN. § 9.69.100 (West 1998); WIS. STAT. ANN. § 940.34 (West Supp. 2000).

94. See WASH. REV. CODE ANN. § 9.69.100 (West 1998); WASH. REV. CODE ANN. § 9.92.020 (West 1998).

95. See WASH. REV. CODE ANN. § 9.69.100 (West 1998).

96. See *id.* § 9.69.100(1)(C).

97. See WASH. REV. CODE ANN. § 9.92.020.

98. See FLA. STAT. ANN. § 794.027 (West Supp. 2000).

99. See *id.* § 794.027(1).

100. See *id.* § 794.027(2).

101. See *id.* § 794.027(3).

102. See *id.* § 794.027(4).

103. See FLA. STAT. ANN. § 775.082, .083 (West Supp. 2000).

104. See *id.* § 775.083.

105. See WIS. STAT. ANN. § 940.34(2)(a) (West Supp. 1999).

106. See *id.* § 940.34(2)(c)(2).

mit and has reasonable grounds to believe that a crime was committed or is in the process of being committed.¹⁰⁷ This law also lists situations in which a person would not have to comply with this duty.¹⁰⁸ The punishment for violating this law is a term of imprisonment of not more than thirty days or a fine of not more than \$500, or both.¹⁰⁹ The Wisconsin Court of Appeals upheld the conviction of two defendants under its duty to report statute.¹¹⁰ Both of the defendants were hosting the party that the victim attended.¹¹¹ One of the defendants witnessed the victim being brutally beaten outside of the defendants' house by seven partygoers.¹¹² The defendants' challenged the duty to report law as unconstitutionally vague.¹¹³ In upholding the constitutionality of the law, the court reasoned that the statute does not have to state with absolute clarity what activity is lawful and what is not.¹¹⁴ The court further reasoned that the vagueness must be such that "one bent on obedience may not discern when the region of proscribed conduct is neared, or such that the trier of fact in ascertaining guilt or innocence is relegated to creating and applying its own standards of culpability rather than applying the standards prescribed in the statute or rule."¹¹⁵

In Rhode Island, the duty to report law limits the mandatory reporting duty to the crimes of sexual assault, murder, manslaughter, and armed robbery.¹¹⁶ Any person that knows that one of these enumerated crimes has been committed or is being committed must report the crime to the appropriate law enforcement official as soon as reasonably practicable.¹¹⁷ A violation of this law is punishable by imprisonment of not more

107. *See id.* § 940.34(2)(b).

108. *See id.* § 940.34(2)(d).

109. *See* WIS. STAT. ANN. § 939.51(3)(c) (West Supp. 1999).

110. *See* State v. Brooks, 523 N.W.2d 208, 208 (1994).

111. *See id.*

112. *See id.*

113. *See id.*

114. *See* Brooks, 523 N.W.2d at 208.

115. State v. LaPlante, 521 N.W.2d 448, 450 (Wis. Ct. App. 1994) (quoting State v. Pittman, 496 N.W.2d 74, 83 (1993)).

116. *See* R.I. GEN. LAWS § 11-1-5.1 (1994).

117. *See id.*

than six months or by a fine that can range from \$500 to \$1,000.¹¹⁸

In Massachusetts, the legislature has imposed a duty to report a death that has occurred under various enumerated circumstances, one of which is "death where criminal violence appears to have taken place."¹¹⁹ However, Massachusetts limits those that can be punished for a failure to report to physicians, police officers, hospital administrators, licensed nurses, and licensed funeral directors.¹²⁰ The penalty for a violation of this law is a fine of not more than \$500.¹²¹

The legislature in Ohio has created four different duties to report, each imposing a different punishment. The first is the duty to report a felony.¹²² A violation of this law is a misdemeanor in the fourth degree,¹²³ punishable by imprisonment of not more than thirty days or a fine of not more than \$250.¹²⁴ The second duty is to report gunshot or stab wounds reasonably believed to be caused by an offense of violence.¹²⁵ This duty is only imposed on a limited group of individuals¹²⁶ and is a misdemeanor in the second degree,¹²⁷ punishable with imprisonment of not more than ninety days or a fine of not more than \$750.¹²⁸ The third duty is imposed on anyone that discovers a body or has firsthand knowledge that another individual is dead.¹²⁹ The law requires that such persons report the death to the proper authorities.¹³⁰ A violation of this duty is a misdemeanor in the fourth degree.¹³¹ Finally, negligent or knowing failure to report a burn injury by various individuals is classified as a minor mis-

118. *See id.*

119. *See* MASS. GEN. LAWS ch. 38, § 3 (West 1999).

120. *See id.*

121. *See id.*

122. *See* OHIO REV. CODE ANN. § 2921.22(A) (Anderson 1999).

123. *See id.* § 2921.22(A), (I).

124. *See id.* § 2929.21(A).

125. *See id.*

126. *See id.*

127. *See* OHIO REV. CODE ANN. § 2921.22(B), (I).

128. *See id.*

129. *See id.* § 2921.22(B).

130. *See id.*

131. *See id.* § 2921.22(C), (J).

demeanor and punishable by a fine of not more than \$100,¹³² or as a misdemeanor in the second degree.¹³³

One of the most striking illustrations of the need for duty to report laws is the Sherrice Iverson case, where David Cash, Jr. "was in a position to stop this brutal murder, yet he did nothing. He then failed to report the crime to the proper authorities. Nevada officials considered prosecuting Mr. Cash for his callous disregard for human life but found no legal basis for a criminal prosecution."¹³⁴

D. *The Sherrice Iverson Case*

On May 25, 1997, at the Primadonna Casino in Nevada, Jeremy Strohmeyer molested and murdered little Sherrice Iverson.¹³⁵ Sherrice had her life stolen from her after a game of hide-and-seek turned into a horrifying attack on her innocence and her life.¹³⁶ The disturbing nature of this incident does not end with Sherrice's death, Mr. Cash watched Mr. Strohmeyer molest and murder Sherrice and did nothing to help this defenseless child.¹³⁷ The following is an excerpt from David Cash's grand jury testimony in the case against Jeremy Strohmeyer for the murder of Sherrice:

Jeremy then grabbed her [Sherrice] and took her into one of the stalls in the women's bathroom, and he shut the door. And I went over to the door. The door was locked. So I went into the stall to the left and boosted myself up on the toilet and looked over. . . . I reached over the stall. Jeremy Strohmeyer was restraining her. I believe he had his — I believe it was left hand over her mouth muffling her screams. I believe it was his right hand that was holding her stomach and was kind of crouched over. My upper torso was over the wall of the stall. I was tapping Jeremy on the head trying to get his attention, telling him to let go, trying to get him to come out of the restroom. I knew at that point that the little game that they were playing kind of crossed the line. I was

132. See OHIO REV. CODE ANN. § 2929.21(A).

133. See *id.* § 2921.22(E), (K).

134. 144 CONG. REC. S10118-04 (Sept. 8, 1998) (quoting Senator Barbara Boxer).

135. See *Jeremy Strohmeyer Transcripts* (visited Sept. 24, 1998) <http://www.lvjr.com/lvrj_home/news/spackages/strohmeyer/transcripts2.html>.

136. See Wilson, *supra* note 16, at A2.

137. See 144 CONG. REC. S10118-04, *supra* note 134, at S10119.

tapping his forehead. At one point I accidentally knocked off his hat. He looked up at me, kind of in a stare, you know, like of — like he didn't care what I was saying. At that point I exited the ladies room.¹³⁸

Although the gruesome nature of this crime is apparent simply because a child's innocence was violated and a life was stolen by a murderer, this particular case reveals the callousness, indifference, brutality, and inhumanity that a human being is capable of in modern society. As Mr. Cash watched his friend assault this frightened seven-year-old girl, he did nothing.¹³⁹ He had the ability to help her, he could have told a security guard what was happening in that bathroom stall, but he chose to walk away and let the attack on this helpless girl continue.¹⁴⁰ He let Sherrice die.¹⁴¹ When Mr. Cash was asked how he felt about Sherrice's death, his response was chilling, "I'm not going to get upset over somebody else's life. I just worry about myself first. I'm not going to lose sleep over somebody else's problems."¹⁴²

Sherrice was at the casino with her father and her brother.¹⁴³ The security personnel at the casino had told her father to take his children home numerous times, but he did not listen.¹⁴⁴ Sherrice and her brother were left alone in the casino, while their father gambled.¹⁴⁵ Naturally, the children found the arcade.¹⁴⁶

Once in the arcade, Sherrice met Mr. Strohmeyer. They began playing hide-and-seek and throwing wads of wet paper towels at each other.¹⁴⁷ When Sherrice ran into the Ladies Room to get more paper towels, Mr. Strohmeyer and Mr. Cash followed her in.¹⁴⁸ Sherrice and Mr. Strohmeyer continued playing while

138. *Jeremy Strohmeyer Transcripts*, *supra* note 135.

139. *See id.*

140. *See Wilson*, *supra* note 16, at A2.

141. *See id.*

142. *Id.*

143. *See The Associated Press, Teen Admits Killing Girl in Casino*, THE STANDARD STAR, Sept. 9, 1998, at 4B (The Standard Star is a Gannett publication and is now referred to as The Journal News).

144. *See id.*

145. *See id.*

146. *See id.*

147. *See Jeremy Strohmeyer Transcripts*, *supra* note 135.

148. *See id.*

they were in the Ladies Room.¹⁴⁹ At one point Sherrice picked up a "Caution When Wet" sign and threw it at Mr. Strohmeyer.¹⁵⁰ Mr. Strohmeyer eerily looked to his friend, Mr. Cash, and then grabbed Sherrice and took her into a stall, where he molested and murdered her.¹⁵¹ Mr. Cash did nothing to help Sherrice.¹⁵²

In response to the outcry resulting from this case, members of Congress felt the need to introduce legislation in the hopes that a situation like this would never occur again.

III. Comment

A. *The Sherrice Iverson Act*

Representative Nick Lampson is the sponsor of the Sherrice Iverson Act. He stated:

With crimes against children on the rise, this type of legislation is more important than ever before. The fact that David Cash apparently stood by and allowed this heinous crime to happen, and then boasted of his lack of concern on a live radio call-in show makes Sherrice's terrible death even more tragic.¹⁵³

Representative Lampson further stated, "[i]n a perfect world, reporting crimes against our children would be common sense. This case highlights the fact that this is not a perfect world and Congress needs to pass legislation to make sure witnesses 'do the right thing' and report incidents of child violence to law enforcement."¹⁵⁴

The Sherrice Iverson Act provides:

[A]n assurance in the form of 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

149. *See id.*

150. *See id.*

151. *See id.*

152. *See Jeremy Strohmeyer Transcripts, supra* note 135.

153. Letter from Nick Lampson, member of Congress, to his colleagues, Sept. 18, 1998 and Oct. 1, 1998 (soliciting co-sponsors for the Sherrice Iverson Act) (on file with author).

154. *Id.*

enforcement official that the individual has witnessed another individual in the State engaging in sexual abuse of a child.¹⁵⁵

The Child Abuse Prevention and Treatment Act was passed in response to a legislative finding that "each year, close to 1,000,000 American children are victims of abuse and neglect."¹⁵⁶ The Sherrice Iverson Act amends the Child Abuse Prevention and Treatment Act requiring states receiving federal funding to have a state law imposing a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.¹⁵⁷ If a state does not pass such a law, it would become ineligible for Federal Child Abuse Prevention and Treatment Act funds.¹⁵⁸

In passing the Child Abuse Prevention and Treatment Act, Congress recognized that "all elements of American society have a shared responsibility in responding" to child abuse prevention.¹⁵⁹ Congress went on to find that "substantial reductions in the prevalence and incidence of child abuse and neglect and the alleviation of its consequences are matters of the highest national priority."¹⁶⁰

When the traditional arguments against Good Samaritan legislation are stacked up against the Sherrice Iverson Act, the benefits of this law outweigh its detriments.

IV. Analysis

Mandating that someone call the police when they witness a crime being committed should not be a role of the government. It should be human instinct to call law enforcement when an individual witnesses a crime being committed against another. Unfortunately, the Sherrice Iverson case illustrates the callousness that is present in this country and the distressing need for

155. H.R. 4531, 105th Cong. (1998).

156. Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101 (1996).

157. See *Bill Summary & Status for the 105th Congress* (visited Sept. 24, 1998) <<http://thomas.loc.gov/cgi-bin/bdqu. . .emp/~bdWDwR::—/bss/d105query.html>>.

158. See 42 U.S.C. § 5106a(b)(2) (1996).

159. Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101.

160. *Id.*

the enactment of the Sherrice Iverson Act which mandates the reporting of sexual abuse on a child.¹⁶¹

A. *Autonomy*

In a democratic society, the government's function is not to mandate action by individuals. "[N]egative prohibitions intrude less on individual liberty than positive duties."¹⁶² Therefore, it is more acceptable to society for the government to prohibit actions, rather than mandate them.

The Sherrice Iverson Act is a duty to report law that minimally infringes on the personal freedom of an individual. The infringement is minimal because the individual would only have to place a telephone call to the proper authorities. This law does not require an individual to risk her life by aiding someone in need, it simply requires someone with the knowledge that a child is being sexually abused to alert the proper authorities.

The benefit of protecting children, who are basically defenseless, clearly outweighs the intrusion into one's privacy that would occur by forcing a person to pick up the telephone and call the authorities. "In essence, the criminal law in this country tends to overvalue a notion of individual rights and autonomy to keep your noses out of other people's business, even when the other person is risking a serious social harm."¹⁶³

B. *Cost*

The costs involved in investigating, arresting, and adjudicating violators of this law would be expensive,¹⁶⁴ but it seems a small price to pay for a child's life and security. Although false reports of child abuse are troublesome and invade the privacy of a family, accurate reports of child abuse have an undeniable benefit. The argument that these high costs will take away from the investigation of more serious crimes¹⁶⁵ fails, because what could be more serious than the murder or sexual abuse of a child?

161. See H.R. 4531, 105th Cong. (1998).

162. Yeager, *supra* note 13, at 47.

163. Dolan, *supra* note 74, at A1 (quoting Peter Arenella, UCLA professor).

164. See Pardun, *supra* note 44, at 605.

165. See *id.*

In addition, non-monetary costs such as bystanders being harmed or the victim being further harmed¹⁶⁶ are not present because the law does not mandate aiding the child. It simply mandates that people report a belief that a child is being sexually abused.¹⁶⁷ Also, no training is required to call the authorities to report having knowledge that a child is being sexually abused.

A troublesome clause in the Sherrice Iverson Act is the clause that penalizes a state by withholding federal funding if the state does not impose criminal penalties for failure to report the sexual abuse of a child.¹⁶⁸ However, the federal funding for State Child Abuse Prevention and Treatment is "not a large sum of money."¹⁶⁹ This is a cost associated with the passage of the Act. "However this is not the *only* pot of money for child abuse prevention programs – there is also money through community development grants."¹⁷⁰ In order to receive federal funding, states have a list of criteria that they must meet, and this Act would simply add one more criteria.¹⁷¹

C. *It's Law Enforcement's Job*

Another concern is that by mandating citizen aid, the purpose of law enforcement would gradually become moot.¹⁷² Law enforcement officials are specially trained to assess situations

166. *See supra* Part II.B.2.

167. *See* H.R. 4531, 105th Cong. (1998). The Sherrice Iverson Act mandates the reporting of a child being sexually abused but does not mandate the actual physical aiding of the child.

168. *See id.*

169. Memo from Abby Hochberg, to CNVL, Oct. 17, 1998 (Summary of the Sherrice Iverson Act) (on file with author).

170. *Id.*

171. *See id.* 42 U.S.C. § 5106a(b)(2) (1996). The Child Abuse Prevention and Treatment Act presently lists as criteria:

An assurance that the State has in effect and is enforcing a State law or has a Statewide program dealing with child abuse and neglect.

An assurance that the State has procedures in place to deal with reports of medical neglect.

A description of the services and types of training programs for various aspects of child abuse and neglect.

An assurance that the programs or projects comply with requirements set forth in the Social Security Act and this subchapter.

172. *See* Wenik, *supra* note 44, at 1795-96.

and aid crime victims. Requiring the ordinary citizen to take on this responsibility would do away with much of law enforcement's duties. However, this Act does not mandate actual citizen intervention. It merely mandates that a witness summon the proper authorities so that law enforcement's purpose can be more easily carried out, not made moot.

In addition, vigilante justice¹⁷³ will not result from this law, unless someone intentionally and falsely reports child abuse, in which case, law enforcement will investigate and dispose of the charges. However, false accusations are a danger regardless of whether or not the law mandates a duty to report a crime. In addition, false reports, although highly embarrassing and harmful, are a small price to pay to save an innocent child's life.

D. *Vagueness and Overbreadth*

A major problem with Good Samaritan laws is that most of the time they are vague or overbroad.¹⁷⁴ "[A] broadly drafted statute could make criminals of us all at some point in our lives,"¹⁷⁵ and will be struck down as unconstitutional¹⁷⁶ because

it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute, it encourages arbitrary and erratic arrests and convictions, makes criminal those activities which by modern standards are normally innocent and places almost unfettered discretion in the hands of the police.¹⁷⁷

Furthermore, selective enforcement is a common issue associated with vague or overbroad laws.¹⁷⁸ "Laws that require citizens to report crimes are 'difficult to word because you need to be able to show that the person knew almost to a certainty that a crime was occurring.'"¹⁷⁹ Aside from having another Good Samaritan report that another witness failed to report a crime, law enforcement has limited means to discover who has

173. *See id.* at 1795-97.

174. *See Reed, supra* note 15, at 44A.

175. *Id.* (quoting Jack King, attorney and spokesman for the National Association of Criminal Defense Attorneys).

176. *See Papachristou v. Jacksonville*, 405 U.S. 156 (1972).

177. *Id.* at 156.

178. *See Wilson, supra* note 16, at A2.

179. Dolan, *supra* note 74, at A1 (quoting John T. Quinn, Chairman of the Executive Board for Vermont County Prosecutors).

violated a duty to report law.¹⁸⁰ This is a great concern in the area of sexual abuse of a child because the abuser probably tries very hard to guard his secret.¹⁸¹ A good possibility is that maybe after the abuser is discovered, the abuser, or even the abused child, will report people who knew about the abuse and did nothing. Even then, the police will be forced to rely on a child abuser or an abused child for information.

The Sherrice Iverson Act narrows the mandatory reporting to crimes of sexual abuse of a child. Violators of the duty to report will have to be investigated and discovered the same way that the criminal who actively commits a crime is investigated and discovered. "In terms of charging people and the question of how do you know someone knew, this shouldn't go on mere suspicion It is, however, possible to prove someone knew about a crime, just as it is possible to prove someone committed a crime."¹⁸²

E. *Retaliation*

To the general public, retaliation may appear to be the most pressing and influential reason for not reporting a crime. Actually, by reporting a crime as heinous as child sexual abuse, the Good Samaritan can be viewed as ruining the abuser's life. However, the abuser made the decision to ruin his own life, in addition to the child's, when he decided to abuse the innocent child. Retaliation may be a justified fear. However, in reality, there will be few instances where retaliation on the Good Samaritan will be a major concern.¹⁸³ An abuser convicted of a crime will be subject to a criminal penalty, often a jail sentence. However, whether or not the abuser is convicted, a Good Samaritan's fear of retaliation is not a sufficient reason to strike down the law. Somehow, society needs to protect defenseless children, and the fear of retaliation should not force us to leave children without protection.

180. See Benjamin, *supra* note 55, at 1B.

181. See Lesia Oesterreich, *Sexual Abuse of Children: Understanding Abuse* (visited Oct. 24, 1998) <<http://www.nncc.org/Abuse/sex.abuse.html>>.

182. See Benjamin, *supra* note 55, at 1B.

183. See Wenik, *supra* note 44, at 1805.

V. Conclusion

Horribly, by the time a girl reaches the age of eighteen, one out of four has been sexually abused, and in the case of boys, one in every six has been abused.¹⁸⁴ Even more alarming, ninety to ninety-five percent of all sexual abuse on children goes unreported.¹⁸⁵ The children are afraid to report the crimes that are being committed against them.¹⁸⁶ Maybe they are ashamed, scared, or alone.¹⁸⁷ Someone needs to protect the children, and if we are not going to do so voluntarily, then it must be legislatively mandated by forcing society to report these crimes with the imposition of criminal penalties.

The Sherrice Iverson Act proposes to impose criminal penalties on someone like Mr. Cash, who knew that a child was being sexually abused and did not summon authorities. This Act will survive the traditional arguments against Good Samaritan legislation. It will impose a small burden on an individual's privacy and autonomy. The costs associated with this law are no greater than the costs associated with any criminal law. Law enforcement's job will not become moot, but will be facilitated by public assistance in reporting child abuse. State legislatures will need to narrow the legislation they draft to comply with the Sherrice Iverson Act so that it can survive a void for vagueness or overbroad challenge. The fear that the Good Samaritans will be retaliated against is justified in theory, however, in reality, retaliation is rarely encountered.

In a ladies restroom stall, Sherrice's life was brutally stolen by a monster.¹⁸⁸ Mr. Cash witnessed the sexual attack, which preceded the murder, on this helpless seven-year-old girl, and he did absolutely nothing to help her.¹⁸⁹ He turned his back on a little girl.¹⁹⁰ Sherrice's mother said that, "[h]e could have stopped it, but he didn't do anything about it. I don't want this to happen to anyone else."¹⁹¹ The Sherrice Iverson Act cannot

184. See Oesterreich, *supra* note 181.

185. Center Against Sexual Abuse, *Sexual Assault Statistics: Child Sexual Abuse Statistics* (visited Oct. 24, 1998) <<http://www.syspac.com/~casa/stats.htm>>.

186. See Oesterreich, *supra* note 181.

187. See *id.*

188. See Jeremy Strohmeyer *Transcripts*, *supra* note 135.

189. See *id.*

190. See *id.*

191. Reed, *supra* note 15, at 44A.

force people to call the proper authorities, but it can criminally punish those who choose to ignore a child in need of help. This Act can send a message to society that callousness will no longer be tolerated, that sexual abuse of our children will no longer be tolerated, and those that have the ability to prevent such abuse and do not will be punished under the law.

*Alison M. Arcuri**

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