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

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

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

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

18 U.S.C.A. § 4 (West 1998).

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

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

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

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

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

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

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

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

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

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

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

[53] *See id.*

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

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

[56] *See id.* at 228.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Minnesota

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

2. Rhode Island

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

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

3. Vermont

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

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

4. Wisconsin

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

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

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

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

5. Florida

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

6. Massachusetts

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

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

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

[89] *See id.*

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

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

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

Id.

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

7. Washington

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

8. Ohio

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

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[92] *See id.*

[93] *See id.*

[94] *See id.*

[95] *See id.*

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

[97] *See* WASH. REV. CODE ANN. § 9.69.100 (West 1998).

[98] *See id.*

[99] *See id.*

[100] *See* OHIO REV. CODE ANN. § 2921.22 (Banks-Baldwin 1998). The statute reads in relevant part: "(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities." *Id.*

[101] *See id.* at § 2921.22 (C).

[102] *See generally id.*

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

9. Colorado

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

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[103] *See* § 2921.22 (H).

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

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

Duty to report a crime – liability for disclosure

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

Id.

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

[107] *See id.* at 1214.

[108] *See id.* at 1205.

[109] *See id.*

[110] *See id.* at 1214.

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

C. States that have proposed statutes.

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

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

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

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[111] *See id.*

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

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

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

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

[116] *See id.*

[117] *See id.*

[118] *See id.*

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

[120] *See id.*

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

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

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

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

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

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

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

[123] *See generally id.*

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

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

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

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

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

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

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

B. Specific Cases of Witness Apathy

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

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

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

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

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

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

[134] *See id.*

[135] *See id.*

[136] *See id.*

[137] *See id.*

[138] *See id.*

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

[140] *See id.*

[141] *See id.*

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

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

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

C. Suggestions for a Model Statute

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

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

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

[144] *See id.*

[145] *See id.*

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

[147] *See id.*

[148] *See id.*

[149] *See id.*

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

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

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

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

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

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

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

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

V. CONCLUSION

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

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

Attachment B

1999, SB 5 Bill History and Committee Minutes

Bill History/Action Display

H

BILL: SB 5

SHORT TITLE: MISPRISION OF FELONY

BILL VERSION: SSSB 5

CURRENT STATUS: (S)RLS

STATUS DATE: 03/16/99

SPONSOR(s): SENATOR(S) PEARCE

TITLE: "An Act relating to the crime of misprision of felony."

Bill Root: Display Bill Root | Next Bill

Full Text | Fiscal Notes

Bill History

Jrn-Date	Jrn-Page	Action
01/19/99	0014	(S) PREFILE RELEASED - 1/8/99
01/19/99	0014	(S) READ THE FIRST TIME - REFERRAL(S)
01/19/99	0014	(S) JUD, FIN
01/27/99	0099	(S) SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
01/27/99	0099	(S) JUD, FIN
02/03/99	Text	(S) JUD AT 1:30 PM BELTZ ROOM 211
02/03/99	Text	(S) HEARD AND HELD
02/03/99	Text	(S) MINUTE(JUD)
02/24/99	Text	(S) JUD AT 1:30 PM BELTZ ROOM 211
02/24/99	Text	(S) HEARD AND HELD
02/24/99	Text	(S) MINUTE(JUD)
03/03/99	Text	(S) JUD AT 1:30 PM BELTZ ROOM 211
03/03/99	Text	(S) MOVED CS (JUD) OUT OF COMMITTEE
03/03/99	Text	(S) MINUTE(JUD)
03/05/99	0422	(S) JUD RPT CS 2DP 1NR SAME TITLE
03/05/99	0422	(S) NR: TAYLOR; DP: TORGERSON, DONLEY
03/05/99	0423	(S) INDETERMINATE FNS (ADM-2, LAW, COURT,
03/05/99	0423	(S) COR)
03/05/99	0423	(S) INDETERMINATE FNS TO CS (LAW, COR)
03/16/99	0561	(S) FIN RPT CS(JUD) 6DP 2NR

03/16/99	0561	(S) DP: TORGERSON, PARNELL, PHILLIPS, WILKEN
03/16/99	0561	(S) LEMAN, DONLEY; NR: GREEN, ADAMS
03/16/99	0561	(S) INDETERMINATE FN (COURT)
03/16/99	0561	(S) PREV INDETERMINATE FNS (ADM-2, LAW, COR)
03/16/99	0561	(S) REFERRED TO RULES
03/16/99	Text	(S) FIN AT 9:00 AM SENATE FINANCE 532
03/16/99	Text	(S) MOVED OUT OF COMMITTEE
03/16/99	Text	(S) RLS AT 11:55 AM FAHRENKAMP 203
03/16/99	Text	(S) MINUTE(FIN)
03/16/99	Text	(S) MINUTE(RLS)

Similar Subject Match or Exact Subject Match
CRIMES
CRIMINAL PROCEDURE

Bill Root: Display Bill Root | Next Bill

To Report Problems with Basis Inquiry

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Senate JUDICIARY Minute

Feb 03, 1999

SB 5 - MISPRISION OF FELONY

SENATOR DRUE PEARCE, prime sponsor of SB 5, explained the bill arose out of a case in Nevada where a seven-year-old girl was raped and murdered. The definition of misprision is to witness or to have knowledge of a felony crime against a person and fail to report that crime immediately to a peace officer or a law enforcement agency. SENATOR PEARCE said this is sometimes referred to as "the Good Samaritan Law."

SB 5 makes it a class C felony if the unreported crime is a violent felony (as described in AS 11.41) or first degree arson. If the unreported crime is any other felony offense, it is a class A misdemeanor.

SENATOR PEARCE recognized that the focus of SB 5 may need to be narrowed and perhaps the bill should apply only to the witnessing of crimes such as murder, kidnaping, fist degree assault and arson in the first degree. However, SENATOR PEARCE would also like the bill to apply to sexual crimes against children.

SENATOR PEARCE noted there has been concern about the word "immediate" within the bill and suggested it might be changed to require the reporting of crimes "within a reasonable time."

SENATOR PEARCE also asked the committee to consider including in the bill a defense for a battered wife who does not report battery against her child ou of fear for her life.

SENATOR PEARCE concluded SB 5 creates a tool that should be available to law enforcement. SENATOR PEARCE said SENATOR DONLEY had agreed to work on the legal issues of this bill in subcommittee.

Number 082

MS. ANNE CARPENETI, representing the Criminal Division of the Department of Law, testified in support of the idea behind the bill as it applies to the most serious crimes. However, the bill could cause problems if applied to other types of crimes and may have unintended negative consequences. MS. CARPENETI explained that the current sponsor substitute covers property and drug crimes. Under this bill, someone who signs a neighbor's Permanent Fund dividend application with the knowledge their neighbor has been away for longer than the allotted amount of time would be guilty of a class A misdemeanor. Also, a parent of a child with a serious drug habit would be guilty if they did anything other than report their child to the police. MS. CARPENETI concluded it is simply not always best for the situation to compel a person to report a crime, and she cited rape victims as an additional example. Even in the case of sexual abuse of a child, parents should have options for

treatment and not be mandated to report to law enforcement.

MS. CARPENETI proposed that even in cases of other serious crimes, a law like this may affect the prosecution of perpetrators by making witnesses unwilling to offer testimony at a later date or to correct inaccuracies in their initial testimony.

MS. CARPENETI stated a concern that SB 5 may create some imbalances when compared with other statutes. There is a law on the books right now that makes it a class C felony to "hinder prosecution in the first degree." This means anyone helping a felon hide his or her crime, avoid criminal responsibility, or profit from his or her crime, is guilty of a C felony. This crime seems more serious than misprision to MS. CARPENETI. MS. CARPENETI concluded this is a good idea for more serious crimes but bears examination for others.

Number 168

SENATOR HALFORD recalled a television documentary he had recently seen which told the story of an 8-year-old boy and his mother who were murdered as a result of the boy being a witness to a prior murder. SENATOR HALFORD said this boy was a victim of the judicial system and to make a felon out of someone who does not believe the State can protect them is terrible, and compounds the failure of the criminal justice system to protect victims and witnesses. SENATOR HALFORD agrees with the intent but sees "awful problems with implementation."

MS. CARPENETI agreed with SENATOR HALFORD. SENATOR HALFORD stated that the Nevada case was horrible and there should be some accountability, but, even for a good cause, SENATOR HALFORD thinks this bill goes too far.

Number 208

MS. CARPENETI again agreed with SENATOR HALFORD and expressed her hope that everyone will do the right thing and report crimes but suggested they should proceed cautiously with this legislation. MS. CARPENETI observed that this law would criminalize common teenage behavior.

SENATOR TORGERSON asked MS. CARPENETI if including an act of concealment within the definition of SB 5 would be a better approach. MS. CARPENETI replied this would narrow the scope of the bill a bit but explained there is a similar law in statute now.

Number 226

SENATOR DONLEY asked if the bill only included unclassified felonies and arson in the first degree whether it would have covered the Nevada case. MS. CARPENETI did not know enough about the case to answer definitively, but she believed it would have. She told SENATOR DONLEY she would find out.

SENATOR HALFORD said he would like to know of any other ways to attack this that might not create so many problems. He agreed the restriction of misprision to unclassified felonies is less

problematic, but said even in our large cities citizens may be endangered by reporting crimes that they may not be able to stop. SENATOR HALFORD proposed adding a defense for people who do not report crimes out of fear. He asked MS. CARPENETI to prepare a list of existing law that could be used to prosecute this type of case.

Number 254

MS. CARPENETI replied that she would be happy to; she listed the prohibition of solicitation of crime, aiding and abetting the commission of a crime and other laws that prohibit this type of behavior that occurs after the commission of a crime. MS. CARPENETI remarked she believes that the sponsor is trying to get at the person who merely witnesses a crime or learns about it after and does not report it. This, she believes, cannot be criminalized.

SENATOR HALFORD asked what constitutes the crime of accessory before the fact. MS. CARPENETI replied it requires knowledge of a crime before the fact and some degree of complicity.

Number 270

SENATOR DONLEY suggested dropping the penalty for misprision to a misdemeanor in order to fit with existing statute, limiting the crime of misprision to unclassified felonies and first degree arson, and adding an affirmative defense for people who do not report crimes due to perceived personal danger.

MR. BLAIR MCCUNE, Deputy Director of the Alaska Public Defender Agency, spoke to the problems he sees with the bill. He directed attention to a handout from a legal textbook. The text cited a similar statute adopted in South Dakota and MR. MCCUNE argued that this law would only affect witnesses "pure as the driven snow," as a person with any degree of culpability would be able to invoke the privilege against self-incrimination afforded by the U.S. Constitution. MR. MCCUNE said this privilege against self-incrimination "would kind of trump this statute."

MR. MCCUNE said other privileges, such as the husband/wife privilege might also apply to cases like this. MR. MCCUNE stated there are statutes listed in AS 11.56 that deal with this type of crime, and "accessory" and "complicity" statutes would also apply, as well as the recently passed "conspiracy" laws.

Number 339

CHAIRMAN TAYLOR commented he was struck by a phrase used in the article cited by MR. MCCUNE:

> "While it may be the duty of a citizen to accuse every offender and to proclaim every offense which comes to his knowledge, the law which would punish him in every case for not performing this duty is too harsh for man."

CHAIRMAN TAYLOR observed this quotation comes from a centuries-old document; he proposed that misprision is a question that has been under debate for quite some time.

CHAIRMAN TAYLOR announced he would set up a working group to further consider SB 5.

Number 350

SENATOR HALFORD observed that it seems the privilege against self-incrimination would be absolute and a person accused of misprision would only have to invoke this privilege "and from there on, it is silence." He concluded SB 5 may not work in the face of this privilege, saying an accused person would not even have to invoke the privilege in front of a jury, but he or she could simply not answer questions. MR. MCCUNE agreed with SENATOR HALFORD. He said if a reasonable possibility of self-incrimination exists, the privilege can be asserted.

SENATOR HALFORD said he would be interested in reviewing cases of any successful prosecution, anywhere in the U.S., under this type of statute in the last decade.

CHAIRMAN TAYLOR, noting there were no further witnesses to testify, appointed a subcommittee consisting of SENATOR DONLEY, SENATOR HALFORD and himself, CHAIRMAN TAYLOR. He said the matter would be back before the committee within a few weeks.

Senate JUDICIARY Minute

Feb 24, 1999

SB 5 - MISPRISION OF FELONY

SENATOR DAVE DONLEY presented a work draft for SB 5 that establishes the crime of misprision and makes it applicable to unclassified felonies and felony crimes against a person. The bill makes the crime of misprision a class A or B felony, depending on the severity of the crime witnessed. This version adds an affirmative defense for witnesses who do not report a crime in a timely manner out of fear they may be in danger if they do so, and specifies that the state need not prove a person knew the class of felony they witnessed in order to be prosecuted under this statute.

Number 052

SENATOR DONLEY moved the adoption of work draft M(Luckhaupt) as the committee substitute. Without objection, the committee substitute was adopted.

MR. BLAIR MCCUNE, Deputy Director of the Alaska Public Defender Agency, said the bill conflicts with the privilege of self-incrimination, which gives any person who fears they may be charged with an offense the right not to report the crime. SB 5 may result in requiring a person who has nothing to do with an offense being required to report it, while a person with some involvement in a crime would not.

MR. MCCUNE proposed Alaska has other statutes, such as "hindering prosecution," with which to prosecute a person who renders assistance to a criminal by providing transportation, money, or concealment.

Number 100

SENATOR PEARCE asked how Alaska would prosecute the Nevada case in which a young man witnessed, but did not participate in a crime. MR. MCCUNE replied in that case the young man provided transportation to the perpetrator.

CHAIRMAN TAYLOR expressed concern that the intent of this bill is to criminalize behavior similar to "abetting" a criminal, or being an accessory to a crime, without actually participating in the crime.

MR. MCCUNE explained to aid or abet a criminal involves complicity in the crime and criminal intent. A person convicted as an accessory can be punished in the same manner as the principal perpetrator. CHAIRMAN TAYLOR asked if the hindering prosecution statute requires intent and MR. MCCUNE replied it requires intent to hinder the apprehension or prosecution of a criminal. CHAIRMAN TAYLOR commented that the level of intent in SB 5 is one level lower than that.

SENATOR PEARCE indicated her concern with situations of abused women and children where there is knowledge and implicit support of the abuse by family and community members. Part of her intent with SB 5 is to see these cases prosecuted. She said she has no answer to the self-incrimination question, but this is a widespread problem within Alaska and, "I'm not convinced that we could use 'hindering prosecution' for the sorts of cases that I am thinking about . . . "

SENATOR PEARCE remarked that it is unfair to allow children to be abused because of a protection from self-incrimination. "I don't care what the Constitution says in this particular case - it doesn't work for me in this case."

CHAIRMAN TAYLOR said authorities are often constrained by a pattern within dysfunctional families that keeps abuse from being reported. He asked, "Are we going to be imprisoning moms because they didn't go forward earlier?" SENATOR PEARCE replied the language on lines 12-14 of page 1 was inserted to provide an affirmative defense for most of those cases, but it does not cover cases in which both parents should be prosecuted. She said, "If either parent stands by and watches while the other parent abuses the child, as far as I am concerned, both parents should be prosecuted in some manner."

CHAIRMAN TAYLOR mentioned SENATOR HALFORD'S concern about personal safety. SENATOR PEARCE said language had been inserted into the bill to deal with that "fear factor."

Number 288

SENATOR HALFORD explained there is another factor; the children themselves do not come forward for fear of losing one of their parents, despite how deviant that parent may be. He said he did not want to force the loss of both parents or compel the family to go to court, instead of getting counseling. SENATOR PEARCE did not dispute this point, but said, "We have to put some faith in the prosecutors' . . . ability to decide which cases should be prosecuted and which ones shouldn't." She said SB 5 would provide a method to prosecute those who should be prosecuted. SENATOR HALFORD concluded this is a difficult area of discussion.

SENATOR PEARCE agreed this is a difficult subject, but emphasized she appreciated having a full discussion on the bill. She proposed that in some cases those who should be prosecuted are family members but not necessarily the parents of the abused child.

CHAIRMAN TAYLOR asked how the bill will affect counselors, preachers, police officers and school teachers; the bill has a wide sweep. SENATOR HALFORD said the bill only exempts lawyers.

Number 365

MS. ANNE CARPENETI, representing the criminal division of the Department of Law, thanked the committee for the work done on the bill in response to the concerns of the Department.

MS. CARPENETI reported the bill is still too broad and requires victims of rape and domestic violence as well as spouses of child abusers to report these crimes or be subject to a criminal violation. The bill forces parents to report spouses to the criminal justice system, rather than allowing them the choice to pursue counseling or seek another solution. She suggested limiting the offenses covered by SB 5 to murder, attempted murder, kidnaping, arson and maybe first-degree sexual abuse of a minor. The nature of these crimes offset some of the concerns raised because these are the most serious crimes where victims are unable to be heard.

SENATOR TORGERSON asked how a victim of domestic violence or rape could be prosecuted if the victim's testimony would be the evidence of the crime. MS. CARPENETI said a person is required to report an offense unless he or she is the perpetrator and therefore covered by the right against self-incrimination. SENATOR HALFORD said parents who know their child is being abused are probably violating present law but they are protected by the privilege against self-incrimination. Consequently, "If they are the good parent, who didn't know and now finds out and goes to a psychological professional . . . and takes their advice . . . you can't claim self incrimination - so the self-incrimination only protects the guilty; it doesn't protect the parent who is truly operating in the best interests of the child."

SENATOR PEARCE testified the intent of SB 5 is not to compel a rape victim to make a report, but to require a witness of such a crime report it.

SENATOR PEARCE suggested there has to be a way to get at recidivist pedophiles and protect "the next child, or the next child or the next child." She said it seems the committee is considering sexual abuse of a child by a non-parent a worse crime than sexual abuse by a parent. She does not think anyone subscribes to this view but said, "That is what happens if we don't somehow deal with the parent - they are just as culpable . . . "

Number 479

SENATOR HALFORD cited a real life example to illustrate his point that, "it is very, very difficult to make a parent take an action against their child for the protection of the future."

SENATOR DONLEY asked if deleting the portion of SB 5 relating to class B felonies would give the bill a better focus. ANNE CARPENETI said yes.

Number 525

SENATOR DONLEY moved Amendment #1: insert the phrase, "other than a victim" on page 1, line 5 after the word "person." After some discussion, he modified his motion to insert the phrase after the word "person" on line 4, page 1. Without objection, the amendment was adopted.

SENATOR DONLEY moved Amendment #2: delete from page 1, line 6, and

page 1, line 8, and page 2, line 7 "or class B felony," to focus the bill on very serious crimes.

Number 557

SENATOR HALFORD suggested that the bill should specify the exact crimes covered rather than use the statutory reference. He asked how many crimes would fall under the scope of the bill. After discussion, the consensus of the sponsor, the Department and the committee was that the list of crimes would not be too long to specifically name them in the text of the bill. SENATOR PEARCE stated that her concerns would be covered if the bill encompassed unclassified felonies.

TAPE 99-12, SIDE B
Number 592

SENATOR DONLEY withdrew Amendment #2. He suggested the committee consider a conceptual amendment to limit the bill to unclassified felonies and first-degree arson, and list the offenses specifically in the text of the bill. SENATOR HALFORD moved SENATOR DONLEY's idea as Amendment #3. Without objection, Amendment #3 was adopted.

SENATOR ELLIS asked how the new requirement for "timely" reporting in the bill would compare with the previous requirement for immediate reporting. SENATOR DONLEY observed that the requirement for timely reporting allows for a more flexible application. MS. CARPENETI agreed.

Number 553

CHAIRMAN TAYLOR reflected that the crime created in this bill is difficult to differentiate from conspiracy and accessory. He said the committee will work on another draft of SB 5.

Senate JUDICIARY Minute

Mar 03, 1999

SB 5 - MISPRISION OF FELONY

SENATOR TORGERSON moved the adoption of the work draft (version N dated 2-24). Without objection, the work draft was adopted.

SENATOR DONLEY said he had reviewed the work draft and it appears to be what the committee asked for.

Number 015

SENATOR TORGERSON moved CSSB 5(JUD) out of committee with individual recommendations. Without objection, it was so ordered.

Senate FINANCE Minute

Mar 16, 1999

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5(JUD)
"An Act relating to the crime of misprision of felony."

PAT CARTER, aid to Senator Drue Pearce testified. He told the committee this bill was drafted in response to an incident in Nevada where a seven-year old girl was raped and murdered in a casino rest room. A college student witnessed his friend committing the crime and he walked away and didn't report it. The witness was not punished because Nevada didn't have a Good Samaritan.

He explained that a person would commit the crime of misprision if he or she witnessed a felony committed against another person and failed to immediately report it.

The bill had gone through thorough discussion and alteration in the Senate Judiciary Committee. With the assistance of Senator Dave Donley, several changes were made. Initially it was too broad in language and was narrowed to only apply to the witness of the most heinous crimes, making the failure to do so a Class A misdemeanor. These would be: murder in the first and second degrees, kidnapping, arson in the first degree, sexual assault in the first degree and sexual assault of a child in the first degree. There was discussion about the word, "immediately" as applied to the timely reporting requirement. The bill was amended to read, "in a timely manner." There was also consideration given to a self-defense clause such as in a battered wife scenario. Language was inserted in Section B Paragraph 1 that addressed that situation by giving a reasonable but affirmative defense if the person reasonably believed that they would be put as substantial risk of physical injury by reporting the witness of the crime.

Senator Randy Phillips wanted a reaction from the sponsor to an idea to delete "in a timely manner" and replaced with "within 48 hours" on page 1 line 11. He felt the language was too vague. Pat Carter offered Senator Dave Donley who participated in the discussion in the Senate Judiciary Committee. He gave an example of the consideration given for the case of a rape. There was a possibility of charging a rape victim for not reporting the rape by placing a time frame in the bill. There was discussion in the Senate Judiciary Committee on the placement of this particular language. Senator Dave Donley agreed that was the most persuasive example and said there could be others where a witness remained in the immediate danger of harm from the perpetrators within the 48-hour period.

Senator Randy Phillips suggested a defense attorney could argue what the timely manner meant to his or her client. Pat Carter said that was why it was determined that it was better to leave it up to the discretion of the judge as it applied to individual cases. Senator Randy Phillips questioned whether that was wise. Senator Dave Donley responded that it would actually the trial of fact and would also be up to the jury. Since it was a subjective finding rather than strictly a matter of law, he doubted a judge would take that away from the jury. He felt there needed to be some flexibility when seeking to criminalize this type of action. This bill would criminalize what would otherwise be innocent behavior. What made a person culpable would be their failure to report a crime, not the commission of an actual crime.

Senator Randy Phillips assumed other states had similar statutes. Pat Carter affirmed that some did. Senator Randy Phillips asked how they defined this portion relating to "timely manner". Pat Carter answered that this bill was drafted in the essence of other states. He did not know of another state that had an actual time constraint.

Senator Lyda Green if there was a disincentive for someone who witnessed a heinous crime and without personal involvement, was scared to report. If they later decided to report, would they be punished? Pat Carter called it the guilty conscious factor. He couldn't answer, and said it would be the discretion of the court.

Senator Loren Leman referred to other statutes regarding the hindering of prosecution of the second degree and asked how this bill would interact with that.

Senator Al Adams noted there was a subcommittee that Co-Chair John Torgerson and Senator Dave Donley served on. He wanted to know if the subcommittee considered the impact of the legislation on the Department of Corrections, Department of Law and other agencies that might be financially impacted. Co-Chair John Torgerson said each department submitted indeterminate fiscal notes that explained their positions that they could not determine what the fiscal impact would be since there had never been a similar law for historical reference.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, came to the table at the request of the committee. Senator Sean Parnell referred to Section B, page 1 line 12: affirmative defense. It said it would be a affirmative defense "if the defendant did not report in a timely manner because the defendant reasonably believed that doing so would have exposed the defendant to a substantial risk of physical injury." He noted this bill applied to two different types of witnesses, an innocent bystander and a companion of the perpetrator. He was concerned that the language regarding

the exposure of the defendant to physical injury could be used as a defense. If a perpetrator was harming a victim, he or she could just as easily harm the witness. That would be Senator Sean Parnell's defense if he were in that situation. He wanted to understand if the affirmative defense would gut the statute or if it had limits.

Anne Carpeneti attempted to explain saying the defense was suggested by Senator Rick Halford who was concerned about cases like one in New York were a mother and small boy were killed before they could testify to witnessing a serious crime. Senator Rick Halford didn't want to require people in that position to expose themselves to harm if they were innocent of any wrongdoing. It was an affirmative defense so that a person raising it would have to prove by a preponderance of evidence that he or she had a reasonable belief that reporting it would subject him or her to substantial physical injury.

Senator Sean Parnell asked if prosecutors could use this as leverage for dealing with accomplices. Anne hadn't thought about it but knew that in order to prove accomplice by ability there had to be guilty intent. Senator Sean Parnell pointed out that would not be required under this bill.

Senator Loren Leman understood that there was an interaction with Section 780. He felt it was reasonable clear to him. Anne Carpeneti said that to prove the crime of hindering prosecution in the first or second degree there had to be some intent to hide or help the perpetrator. Her understanding of the misprision statute was that the witness just had to be at the crime fail to report it. It was not something that was criminalized in the past so this would be a new step.

Senator Al Adams asked how the statute would define "witness". Anne Carpeneti replied that was a good question and that it should be defined. The best approach in her opinion, would have the definition as being present when the offence occurred where perhaps there would be the right to make a citizens arrest of the perpetrator. She also suggested the definition include seeing, hearing or otherwise be in the proximity where it would be happening in the witness' presence.

Senator Al Adams asked where was the responsibility to assist and protect the person being harmed rather than just reporting it. He argued that if someone saw a rape being committed that person should go try to stop it. "Was this addressed elsewhere?" he wanted to know. Anne Carpeneti answered no, that there was no duty to prevent a crime that the witness did not participate in. Senator Al Adams wanted to know if other states had statutes stipulating a duty to assist if a person witnessed a crime in progress. Anne Carpeneti was unaware of any but offered to research the issue. She explained that misprision was an old fashioned legal term that had its roots in England but was

never really adopted in the United States. She felt the intent of this legislation was just failure to report a crime.

Co-Chair John Torgerson asked if the department supported the bill. Anne Carpeneti was grateful for the assistance they received from the sponsor. She felt that the legislation was good for very serious crimes such as murder, kidnapping and arson.

Recess (approximately one minute).
However, Anne Carpeneti had some reservations about the inclusion of sexual assault or sexual abuse. If a parent learned of abuse of their child, and chose to take other action rather than reporting the abuse to the authorities, she felt the parent should not be charged with a crime if that parent believed he or she was acting in the best interest of the child.

Senator Dave Donley said Senator Loren Leman had asked him a question about the consistency of the punishments set out in the bill. Senator Dave Donley expressed to him that a lot of progress was made in the Senate Judiciary Committee to address the specific concern of hindering prosecution punishments. The crime of hindering prosecution in the second degree was listed as a Class B Misdemeanor, while the crime of misprision under this bill would be a Class A Misdemeanor. Senator Dave Donley explained that the hindering prosecution in the second-degree charge was applied to incidences where a misdemeanor crime was committed, the crime of misprision would only be applied to cases where a serious, unclassified felony was committed and witnessed. He wondered if the Department of Law wanted to comment on the relationship to the penalties for hindering prosecution.

Anne Carpeneti responded that the department had suggested that the provision in the original bill for the punishment of a Class C Felony did not fit with the scheme of the other statutes. Hindering prosecution in the first degree, which meant aiding or abetting in some way a felony was more serious conduct than simply witnessing and not reporting a crime.

Senator Loren Leman offered a motion to move CS SS SB 5 (JUD) from committee with accompanying indeterminate fiscal notes. Without objection, it was so ordered.

Senate RULES Minute

Mar 16, 1999

SENATOR LEMAN moved to calendar all versions of SENATE BILL NO. 5(JUD) "An Act relating to the crime of misprision of felony."

SENATOR ELLIS objected and asked whether any changes were incorporated into the bill after it passed out of the Senate Judiciary Committee.

SENATOR PEARCE confirmed that no changes were made to the Senate Judiciary Committee version in the Senate Finance Committee. She clarified that the Senate Judiciary Committee version allows for an affirmative defense if the defendant does not report for fear of substantial risk or physical injury, and the classification of the crime of misprision of felony was lowered to a class A misdemeanor. She noted the bill contains no fix for the "catch-22" concern that a person has the right to not incriminate him/herself, however all other concerns, including those of Anne Carpeneti, were addressed.

SENATOR ELLIS maintained his objection. The motion to calendar all versions of SB 5 carried with Senators Miller, Pearce, Leman, and Kelly voting "yea," and Senator Ellis voting "nay."

Attachment C

Cal Penal Code § 152.3
Fla. Stat. §794.027
ALM GL ch. 268 § 40
Nev. Rev. Stat. Ann. § 202.876 - .894
ORC Ann. 2921.22
R.I. Gen. Laws §11-37-3.1
Texas Penal Code § 38.17
Rev. Code Wash. § 9.69.100
Wis. Stat. § 940.34

Cal Pen Code § 152.3 (2006)

§ 152.3. Child Victim Protection Act

(a) Any person who reasonably believes that he or she has observed the commission of any of the following offenses where the victim is a child under the age of 14 years shall notify a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2:

(1) Murder.

(2) Rape.

(3) A violation of paragraph (1) of subdivision (b) of Section 288 of the Penal Code.

(b) This section shall not be construed to affect privileged relationships as provided by law.

(c) The duty to notify a peace officer imposed pursuant to subdivision (a) is satisfied if the notification or an attempt to provide notice is made by telephone or any other means.

(d) Failure to notify as required pursuant to subdivision (a) is a misdemeanor and is punishable by a fine of not more than one thousand five hundred dollars ($1,500), by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

(e) The requirements of this section shall not apply to the following:

(1) A person who is related to either the victim or the offender, including a husband, wife, parent, child, brother, sister, grandparent, grandchild, or other person related by consanguinity or affinity.

(2) A person who fails to report based on a reasonable mistake of fact.

(3) A person who fails to report based on a reasonable fear for his or her own safety or for the safety of his or her family.

HISTORY:

Added Stats 2000 ch 477 § 2 (AB 1422).

NOTES:

Note

Stats 2000 ch 477 provides:

SECTION 1. This act shall be known as, and may be cited as, the Sherrice Iverson Child Victim Protection Act.

Hierarchy Notes:

Pen Code Note

Pt. 1, Tit. 7 Note

Pt. 1, Tit. 7, Ch. 7 Note

Fla. Stat. § 794.027 (2006)

§ 794.027. Duty to report sexual battery; penalties

A person who observes the commission of the crime of sexual battery and who:

(1) Has reasonable grounds to believe that he or she has observed the commission of a sexual battery;

(2) Has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;

(3) Fails to seek such assistance;

(4) Would not be exposed to any threat of physical violence for seeking such assistance;

(5) Is not the husband, wife, parent, grandparent, child, grandchild, brother, or sister of the offender or victim, by consanguinity or affinity; and

(6) Is not the victim of such sexual battery

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

HISTORY: s. 3, ch. 84-86; s. 1226, ch. 97-102.

Massachusetts—ALM GL ch. 268, § 40 (2006)

§ 40. Failure of Witness to Report Aggravated Rape, Rape, Murder, Manslaughter, or Armed Robbery; Penalty.

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

HISTORY: 1983, 597, § 2.

NOTES:

Jurisprudence

15A Am Jur 2d, Compounding Crimes § § 1-4.

31A Am Jur 2d, Extortion, Blackmail, and Threats § § 20, 21, 25, 27-32, 38, 40, 45-47.

Annotations

Validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes. 100 ALR3d 431.

Law Reviews

Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue.* 84 Tex. L. Rev. 653 (February, 2006).

Ciociola, *Misprision of Felony and Its Progeny.* 41 Brandeis LJ 697 (Summer, 2003).

Bagby, *Justifications for State Bystander Intervention Statutes: Why Crime Witnesses Should Be Required to Call for Help* . 33 Ind L Rev 571, 2000.

Decker, *The Varying Parameters of Obstruction of Justice in American Criminal Law.* 65 La. L. Rev. 49 (Fall, 2004).

Thompson, *Prosecuting White-Collar Crime: The White-Collar Police Force: "Duty to Report" Statutes in Criminal Law Theory.* 11 Wm & Mary Bill of Rts J 3 (December 2002).

Nev. Rev. Stat. Ann. § 202.870 (2006)

202.870. Definitions.

As used in NRS 202.870 to 202.894, inclusive, unless the context otherwise requires, the words and terms defined in NRS 202.873; and 202.876 have the meanings ascribed to them in those sections.

HISTORY: 1999, ch. 631, § 8, p. 3521.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

202.873. "Law enforcement agency" defined.

"Law enforcement agency" means:

1. The office of the attorney general or the office of a district attorney within this state and any attorney, investigator, special investigator or employee who is acting in his professional or occupational capacity for such an office; or

2. Any other law enforcement agency within this state and any peace officer or employee who is acting in his professional or occupational capacity for such an agency.

HISTORY: 1999, ch. 631, § 9, p. 3521.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

202.876. "Violent or sexual offense" defined.

"Violent or sexual offense" means any act that, if prosecuted in this state, would constitute any of the following offenses:

1. Murder or voluntary manslaughter pursuant to NRS 200.010 to 200.260, inclusive.

2. Mayhem pursuant to NRS 200.280.

3. Kidnaping pursuant to NRS 200.310 to 200.340, inclusive.

4. Sexual assault pursuant to NRS 200.366.

5. Robbery pursuant to NRS 200.380.

6. Administering poison or another noxious or destructive substance or liquid with intent to cause death pursuant to NRS 200.390.

7. Battery with intent to commit a crime pursuant to NRS 200.400.

8. Administering a drug or controlled substance to another person with the intent to enable or assist the commission of a felony or crime of violence pursuant to NRS 200.405; or 200.408.

9. False imprisonment pursuant to NRS 200.460, if the false imprisonment involves the use or threatened use of force or violence against the victim or the use or threatened use of a firearm or a deadly weapon.

10. Assault with a deadly weapon pursuant to NRS 200.471.

11. Battery which is committed with the use of a deadly weapon or which results in substantial bodily harm pursuant to NRS 200.481.

12. An offense involving pornography and a minor pursuant to NRS 200.710; or 200.720.

13. Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

14. Intentional transmission of the human immunodeficiency virus pursuant to NRS 201.205.

15. Open or gross lewdness pursuant to NRS 201.210.

16. Lewdness with a child pursuant to NRS 201.230.

17. An offense involving pandering or prostitution in violation of NRS 201.300; , 201.320; or 201.340.

18. Coercion pursuant to NRS 207.190, if the coercion involves the use or threatened use of force or violence against the victim or the use or threatened use of a firearm or a deadly weapon.

19. An attempt, conspiracy or solicitation to commit an offense listed in subsections 1 to 18, inclusive.

HISTORY: 1999, ch. 631, § 10, p. 3521.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

202.879. "Reasonable cause to believe" and "as soon as reasonably practicable" defined; authorized manner of making report and communicating information.

For the purposes of NRS 202.870 to 202.894, inclusive, a person:

1. Has "reasonable cause to believe" if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.

2. Acts "as soon as reasonably practicable" if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would act within approximately the same period under those facts and circumstances.

3. May make a report by telephone or, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, by any other means of oral, written or electronic commu-

nication that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the information.

HISTORY: 1999, ch. 631, § 11, p. 3522.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

202.882. Duty to report violent or sexual offense against child 12 years of age or younger; penalty for failure to report; contents of report.

1. Except as otherwise provided in NRS 202.885; and 202.888, a person who knows or has reasonable cause to believe that another person has committed a violent or sexual offense against a child who is 12 years of age or younger shall:

(a) Report the commission of the violent or sexual offense against the child to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the other person has committed the violent or sexual offense against the child.

2. A person who knowingly and willfully violates the provisions of subsection 1 is guilty of a misdemeanor.

3. A report made pursuant to this section must include, without limitation:

(a) If known, the name of the child and the name of the person who committed the violent or sexual offense against the child;

(b) The location where the violent or sexual offense was committed; and

(c) The facts and circumstances which support the person's belief that the violent or sexual offense was committed.

HISTORY: 1999, ch. 631, § 12, p. 3523.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

Cross references.

As to immunity from civil liability for reporting threat of violence against a school official, employee or pupil, see NRS 388.880; and 394.177.

202.885. Limitations on prosecution or conviction for failure to report.

1. A person may not be prosecuted or convicted pursuant to NRS 202.882 unless a court in this state or any other jurisdiction has entered a judgment of conviction against a culpable actor for:

(a) The violent or sexual offense against the child; or

(b) Any other offense arising out of the same facts as the violent or sexual offense against the child.

2. For any violation of NRS 202.882, an indictment must be found or an information or complaint must be filed within 1 year after the date on which:

(a) A court in this state or any other jurisdiction has entered a judgment of conviction against a culpable actor as provided in subsection 1; or

(b) The violation is discovered,

whichever occurs later.

3. For the purposes of this section:

(a) A court in "any other jurisdiction" includes, without limitation, a tribal court or a court of the United States or the Armed Forces of the United States.

(b) "Convicted" and "conviction" mean a judgment based upon:

(1) A plea of guilty or nolo contendere;

(2) A finding of guilt by a jury or a court sitting without a jury;

(3) An adjudication of delinquency or finding of guilt by a court having jurisdiction over juveniles; or

(4) Any other admission or finding of guilt in a criminal action or a proceeding in a court having jurisdiction over juveniles.

(c) A court "enters" a judgment of conviction against a person on the date on which guilt is admitted, adjudicated or found, whether or not:

(1) The court has imposed a sentence, a penalty or other sanction for the conviction; or

(2) The person has exercised any right to appeal the conviction.

(d) "Culpable actor" means a person who:

(1) Causes or perpetrates an unlawful act;

(2) Aids, abets, commands, counsels, encourages, hires, induces, procures or solicits another person to cause or perpetrate an unlawful act; or

(3) Is a principal in any degree, accessory before or after the fact, accomplice or conspirator to an unlawful act.

HISTORY: 1999, ch. 631, § 13, p. 3523; 2003, ch. 284, § 40, p. 1483.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

Effect of amendment.

The 2003 amendment, effective July 1, 2003, deleted "guilty but mentally ill" following "a plea of guilty" in subdivision 3(b)(1).

202.888. Persons exempt from duty to report.

The provisions of NRS 202.882 do not apply to a person who:

1. Is less than 16 years of age;

2. Is, by blood or marriage, the spouse, brother, sister, parent, grandparent, child or grandchild of:

(a) The child who is the victim of the violent or sexual offense; or

(b) The person who committed the violent or sexual offense against the child;

3. Suffers from a mental or physical impairment or disability that, in light of all the surrounding facts and circumstances, would make it impracticable for the person to report the commission of the violent or sexual offense against the child to a law enforcement agency;

4. Knows or has reasonable cause to believe that reporting the violent or sexual offense against the child to a law enforcement agency would place the person or any other person who is related to him by blood or marriage or who resides in the same household as he resides, whether or not the other person is related to him by blood or marriage, in imminent danger of suffering substantial bodily harm;

5. Became aware of the violent or sexual offense against the child through a communication or proceeding that is protected by a privilege set forth in chapter 49 of NRS; or

6. Is acting in his professional or occupational capacity and is required to report the abuse or neglect of a child pursuant to NRS 432B.220.

HISTORY: 1999, ch. 631, § 14, p. 3524.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

The Legislative Counsel, in subdivision 4, substituted "in the same household as he resides" for "in the same household as him."

202.891. Immunity from civil or criminal liability; presumption that report was made in good faith.

1. If a person who is required to make a report pursuant to NRS 202.882 makes such a report in good faith and in accordance with that section, the person is immune from civil or criminal liability for any act or omission related to that report, but the person is not immune from civil or criminal liability for any other act or omission committed by the person as part of, in connection with or as a principal, accessory or conspirator to the violent or sexual offense against the child, regardless of the nature of the other act or omission.

2. If a person is not required to make a report pursuant to NRS 202.882 and the person makes such a report to a law enforcement agency in good faith, the person is immune from civil or criminal liability for any act or omission related to that report, but the person is not immune from civil or criminal liability for any other act or omission committed by the person as part of, in connection with or as a principal, accessory or conspirator to the violent or sexual offense against the child, regardless of the nature of the other act or omission.

3. For the purposes of this section, if a person reports to a law enforcement agency that another person has committed a violent or sexual offense against a child, whether or not the person is required to make such a report pursuant to NRS 202.882, the person is presumed to have made the report in good faith unless the person is being prosecuted for a criminal violation, including, without limitation, a violation of the provisions of NRS 207.280.

HISTORY: 1999, ch. 631, § 15, p. 3524.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

202.894. Report deemed report of abuse or neglect of child made pursuant to NRS 202.882.

If a person reports to a law enforcement agency that another person has committed a violent or sexual offense against a child, whether or not the person is required to make such a report pursuant to NRS 202.882, and the violent or sexual offense against the child would constitute abuse or neglect of a child, as defined in NRS 432B.020, the report made by the person shall be deemed to be a report of the abuse or neglect of the child that has been made pursuant to NRS 432B.220 and:

1. The appropriate agencies shall act upon the report pursuant to chapter 432B of NRS; and

2. The report may be used in the same manner as other reports that are made pursuant to NRS 432B.220.

HISTORY: 1999, ch. 631, § 16, p. 3525.

NOTES:

Editor's note.

Acts 1999, ch. 631, § 26 provides: "The amendatory provisions of this act do not apply to a person who violates NRS 200.5093; or 202.882 before October 1, 1999."

Ohio—ORC Ann. 2921.22 (2006)

§ 2921.22. Failure to report a crime or knowledge of a death or burn injury

(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(B) Except for conditions that are within the scope of division (E) of this section, no physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the physician, limited practitioner, nurse, or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom a report required by division (C) of this section was made, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within the person's knowledge that may have a bearing on the investigation of the death.

(E) (1) As used in this division, "burn injury" means any of the following:

(a) Second or third degree burns;

(b) Any burns to the upper respiratory tract or laryngeal edema due to the inhalation of superheated air;

(c) Any burn injury or wound that may result in death;

(d) Any physical harm to persons caused by or as the result of the use of fireworks, novelties and trick noisemakers, and wire sparklers, as each is defined by section 3743.01 of the Revised Code.

(2) No physician, nurse, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E)(2) or (3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the state fire marshal. The report shall comply with the uniform standard developed by the state fire marshal pursuant to division (A)(15) of section 3737.22 of the Revised Code.

(5) Anyone participating in the making of reports under division (E) of this section or anyone participating in a judicial proceeding resulting from the reports is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of such actions. Notwithstanding section 4731.22 of the Revised Code, the physician-patient relationship is not a ground for excluding evidence regarding a person's burn injury or the cause of the burn injury in any judicial proceeding resulting from a report submitted under division (E) of this section.

(F) (1) Any doctor of medicine or osteopathic medicine, hospital intern or resident, registered or licensed practical nurse, psychologist, social worker, independent social worker, social work assistant, professional clinical counselor, or professional counselor who knows or has reasonable cause to believe that a patient or client has been the victim of domestic violence, as defined in section 3113.31 of the Revised Code, shall note that knowledge or belief and the basis for it in the patient's or client's records.

(2) Notwithstanding section 4731.22 of the Revised Code, the doctor-patient privilege shall not be a ground for excluding any information regarding the report containing the knowledge or belief noted under division (F)(1) of this section, and the information may be admitted as evidence in accordance with the Rules of Evidence.

(G) Divisions (A) and (D) of this section do not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client; doctor and patient; licensed psychologist or licensed school psychologist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under section 2739.04 or 2739.12 of the Revised Code.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or organization certified pursuant to section 3793.06 of the Revised Code.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of section 2907.02 or 2907.05 of the Revised Code or to victims of felonious sexual penetration in violation of former section 2907.12 of the Revised Code. As used in this division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A) of this section is a misdemeanor of the fourth degree. Violation of division (B) of this section is a misdemeanor of the second degree.

(J) Whoever violates division (C) or (D) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

(K) (1) Whoever negligently violates division (E) of this section is guilty of a minor misdemeanor.

(2) Whoever knowingly violates division (E) of this section is guilty of a misdemeanor of the second degree.

HISTORY: 134 v H 511 (Eff 1-1-74); 136 v H 750 (Eff 8-26-75); 136 v S 283 (Eff 11-26-75); 137 v H 1 (Eff 8-26-77); 137 v S 203 (Eff 1-13-78); 138 v H 284 (Eff 10-22-80); 142 v H 273 (Eff 9-10-87); 143 v H 317 (Eff 10-10-89); 144 v S 343 (Eff 3-24-93); 145 v H 335 (Eff 12-9-94); 146 v H 445 (Eff 9-3-96); 146 v S 223 (Eff 3-18-97); 149 v S 115. Eff 3-19-2003.

NOTES:

Not analogous to former RC § 2921.22 (125 v H 308), repealed 134 v H 511, § 2, eff 1-1-74.

The provisions of § 4 of SB 115 (149 v --) read as follows:

SECTION 4. Section 2921.22 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 445 and Sub. S.B. 223 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

1974 Committee Comment to H 511

This first part of this section is similar to, but narrower than the common law crime of misprision of felony. The second part of the section retains a requirement in former law that doctors and others report injuries patently caused by criminal violence.

The gist of misprision at common law was keeping silence or failing to attempt to apprehend the offender when one knew a felony had been committed. There was only one exception: a wife was not bound to report her husband's crimes. It was a passive offense, i.e., if any active aid was given to the offender, the aider became an accessory to the crime, after the fact.

Under this section, persons are required only to inform authorities of felonies of which they have knowledge, and are not required to attempt apprehension of the offender. Also, a number of relationships are privileged under this section which were not privileged at common law. These include: attorney and client; doctor and patient; licensed psychologist and client; priest and penitent; clergyman and parishioner; husband and wife, and other immediate family members; newsmen, with respect to confidential news sources; and those engaged in authorized drug treatment or counseling programs.

The rationale for requiring that serious crimes be reported is that effective crime prevention and law enforcement depend significantly on the cooperation of the public. The section covers, for example, the situation where bystanders ignore a murder victim's pleas for help because they do not want to "become involved." The rationale for the exceptions is that, in each case in which a privilege is applicable, the considerations favoring keeping silence override the general policy considerations requiring serious crimes to be reported.

This section also requires doctors, limited practitioners, nurses, and others who give aid to the sick or injured, to report gunshot and stab wounds, and other serious injuries which they know or have reasonable cause to believe resulted from a crime of violence, such as the "battered child syndrome." The reporting requirement under this part of the section is absolute, i.e., no privilege attaches in the cases covered.

The section explicitly states that no disclosure of information under the section can give rise to any cause of action or recrimination of any kind for breach of privilege or confidence. This includes disclosure of information which is privileged under the section, and which the person disclosing it is therefore not required to divulge.

Failure to report a crime is a misdemeanor of the fourth degree when the failure is to report a felony of which one has knowledge. Failure of a doctor, nurse, or person giving aid to the sick or injured to report wounds resulting from criminal violence is a misdemeanor of the second degree.

CROSS-REFERENCES TO RELATED STATUTES

Penalties, RC § 2929.21.
Contracts for private operation and management of correctional facilities, RC § 9.06.
Report of escapes, RC § 9.07.
County jails, duty to give notice of escape and apprehension of escapee, RC § 341.01.1.
Department of rehabilitation and correction, notice of escapes, RC § 5120.14.
Disclosure of mediation communication, RC § 2317.02.3.
Felony defined, RC § 2901.02.
Form for reporting burn injuries, RC § 3737.22.
Knowingly defined, RC § 2901.22.
Law enforcement officer defined, RC § 2901.01.
Municipal jails, duty to give notice of escape and apprehension of escapee, RC § 753.19.
Negligently defined, RC § 2901.22.
Offense of violence defined, RC § 2901.01.
Privilege defined, RC § 2901.01.
Privileged nature of assisted communications at telecommunications relay service, RC § 4931.35.
Serious physical harm to persons defined, RC § 2901.01.

OHIO ADMINISTRATIVE CODE

State board of pharmacy --
Report of theft or loss of dangerous drugs, controlled substances, and drug documents: procedures. OAC 4729-9-15.
Report of theft or loss of nitrous oxide. OAC 4729-25-04.

CASE NOTES AND OAGS PRACTICE MANUALS AND TREATISES

Anderson's Ohio Manual of Criminal Complaints and Indictments § 2921.22 Failure to report a crime or knowledge of a death or burn injury

ALR

Attorney's disclosure, in federal proceedings, of identity of client as violating attorney-client privilege. 84 ALRFed 852.

Communications between spouses as to joint participation in crime as within privilege of interspousal communications. 62 ALR4th 1134.

Liability in tort for interference with attorney-client relationship. 90 ALR4th 621.

Who is "representative of the client" within state statute or rule privileging communications between an attorney and the representative of the client. 66 ALR4th 1227.

ANALYSIS

CONSTITUTIONALITY.

Revised Code § 2921.22 is unconstitutional as applied in a case where, by virtue of reporting the crime, the person would have given information which would tend to incriminate herself or lead to her own prosecution: State v. Wardlow, 20 Ohio App. 3d 1, 484 N.E.2d 276 (1985).

Revised Code § 2921.22 is not unconstitutionally void for vagueness, as it gives a person of ordinary intelligence fair notice that the conduct of failing to report a serious crime about which he has knowledge is forbidden: State v. Wardlow, 20 Ohio App. 3d 1, 484 N.E.2d 276 (1985).

GENERALLY.

Revised Code § 2921.22 does not require that a felony be directly reported to the police or require a person to answer subsequent questions: In re Stichtenoth, 67 Ohio App. 2d 108, 425 N.E.2d 957 (1980).

ACCOUNTANTS.

An accountant cannot be disciplined by the accountancy board for reporting a felony pursuant to RC § 2921.22: Kelly v. Accountancy Bd., 88 Ohio App. 3d 453, 624 N.E.2d 292, 1993 Ohio App. LEXIS 3433 (1993).

CHILD ABUSE.

Revised Code § 2151.42.1 is not an exclusive listing of those persons who must report knowledge or suspicion of child abuse. A duty to report abuse can arise from a special relationship at law, irrespective of a statutory duty. Since a parent has a special relationship to the child, the duty of care, protection and support under RC § 2921.22(A) would create a duty to stop the alleged acts of abuse: Hite v. Brown, 100 Ohio App. 3d 606, 654 N.E.2d 452, 1995 Ohio App. LEXIS 868 (1995).

CIVIL LIABILITY.

Individual who knows that a felony has been committed, pursuant to RC § 2921.22(A), is required to report such information to law enforcement; the trial court properly granted summary judgment in a libel claim when, based on exist-

ing precedent, the trial court concluded that a privilege of statutory immunity applied to shield the bank from liability for statements made to the police. Lee v. City of Upper Arlington, 2003 Ohio App. LEXIS 6485, 2003 Ohio 7157, (2003).

EMPLOYMENT SEPARATION AGREEMENT.

An employment separation agreement clause is illegal per se when it purports to suppress information concerning the commission of a felony: Bowman v. Parma Bd. of Edn., 44 Ohio App. 3d 169, 542 N.E.2d 663 (1988).

PRIVILEGED COMMUNICATION.

--PHYSICIANS.

Revised Code § 2921.22(B) provides a statutory exception to the physician-patient privilege: State v. Jones, 90 Ohio St. 3d 403, 739 N.E.2d 300, 2000 Ohio LEXIS 2995, 2000 Ohio 187, (2000).

--TESTIMONY.

Where a physician is required by former RC § 2917.44 to report to a law-enforcement officer a gunshot wound or wound inflicted by a deadly weapon, the former may testify, without violating the physician-patient privilege, as to the description of the wounded person, as to his name and address, if known, and as to the description of the nature and location of such wound, obtained by examination, observation and treatment of the victim: (decided under former analogous section) State v. Antill, 176 Ohio St. 61, 197 N.E.2d 548 (1964).

--PSYCHOLOGISTS.

Under RC § 2921.22(F)(1), a licensed psychologist is not required to report a felony which has been or is being committed when such information is privileged under RC § 4732.19 due to the psychologist-client relationship: OAG No. 88-027 (1988).

Under RC § 2921.22(F)(1), those unlicensed supervisees of a licensed psychologist enumerated in RC § 4732.22(C), (D) and (E) are not required to report a felony which has been or is being committed when such information is privileged under RC § 4732.19 due to the psychologist-client relationship. OAG No. 88-027 (1988).

Under RC § 2921.22(G), those unlicensed supervisees of a licensed psychologist enumerated in RC § 4732.22(C), (D) and (E) who disclose privileged information to law enforcement authorities in reporting that a felony has been or is being committed are not subject to any liability or recrimination for breach of privilege or confidence for such disclosure: OAG No. 88-027 (1988).

Under RC § 2921.22(G), a licensed psychologist who voluntarily discloses privileged information to law enforcement authorities in reporting that a felony has been or is being committed is not subject to any liability or recrimination for breach of privilege or confidence for such disclosure: OAG No. 88-027 (1988).

R.I. Gen. Laws § 11-37-3.1 (2006)

§ 11-37-3.1. Duty to report sexual assault

Any person, other than the victim, who knows or has reason to know that a first degree sexual assault or attempted first degree sexual assault is taking place in his or her presence shall immediately notify the state police or the police department of the city or town in which the assault or attempted assault is taking place of the crime.

HISTORY: P.L. 1983, ch. 268, § 1.

R.I. Gen. Laws § 11-56-1 (2006)

§ 11-56-1. Duty to assist

Any person at the scene of an emergency who knows that another person is exposed to, or has suffered, grave physical harm shall, to the extent that he or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person. Any person violating the provisions of this section shall be guilty of a petty misdemeanor and shall be subject to imprisonment for a term not exceeding six (6) months, or by a fine of not more than five hundred dollars ($ 500), or both.

HISTORY: P.L. 1984, ch. 416, § 1.

Texas Penal Code § 38.17 (2006)

§ 38.17. Failure to Stop or Report Aggravated Sexual Assault of Child

(a) A person, other than a person who has a relationship with a child described by Section 22.04(b), commits an offense if:

(1) the actor observes the commission or attempted commission of an offense prohibited by Section 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child;

(2) the actor fails to assist the child or immediately report the commission of the offense to a peace officer or law enforcement agency; and

(3) the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.

(b) An offense under this section is a Class A misdemeanor.

HISTORY: Stats. 1999 76th Leg. Sess. Ch. 1344, effective September 1, 1999.

LexisNexis (R) Notes:

CASE NOTES

1. No person could be convicted of perjury if proof that the person's statement was false rested solely upon the testimony of one witness other than the defendant; the record contradicted defendant's assertion that one only person offered proof of the perjury, and a habeas corpus applicant did not possess a constitutional right to commit perjury in furtherance of that application. Lee v. State, 2004 Tex. App. LEXIS 1249 (Tex. App. Austin Feb. 12 2004).

2. No person could be convicted of perjury if proof that the person's statement was false rested solely upon the testimony of one witness other than the defendant; the record contradicted defendant's assertion that one only person offered proof of the perjury, and a habeas corpus applicant did not possess a constitutional right to commit perjury in furtherance of that application. Lee v. State, 2004 Tex. App. LEXIS 1249 (Tex. App. Austin Feb. 12 2004).

TREATISES AND ANALYTICAL MATERIALS

1. 20 Tex Jur CRIMINAL LAW § 1215, Texas Jurisprudence, Third Edition, Criminal Law, § 1215 Generally; definitions, Copyright 2003 West Group.

2. 20 Tex Jur CRIMINAL LAW § 1270, Texas Jurisprudence, Third Edition, Criminal Law, § 1270 Failure to stop or report aggravated sexual assault of child, Copyright 2003 West Group.

Rev. Code Wash. (ARCW) § 9.69.100 (2006)

§ 9.69.100. Duty of witness of offense against child or any violent offense -- Penalty

(1) A person who witnesses the actual commission of:

(a) A violent offense as defined in RCW 9.94A.030 or preparations for the commission of such an offense;

(b) A sexual offense against a child or an attempt to commit such a sexual offense; or

(c) An assault of a child that appears reasonably likely to cause substantial bodily harm to the child,

shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.

(2) This section shall not be construed to affect privileged relationships as provided by law.

(3) The duty to notify a person or agency under this section is met if a person notifies or attempts to provide such notice by telephone or any other means as soon as reasonably possible.

(4) Failure to report as required by subsection (1) of this section is a gross misdemeanor. However, a person is not required to report under this section where that person has a reasonable belief that making such a report would place that person or another family or household member in danger of immediate physical harm.

HISTORY: 1987 c 503 § 18; 1985 c 443 § 21; 1970 ex.s. c 49 § 8.

NOTES:
SEVERABILITY -- EFFECTIVE DATE -- 1987 C 503: See RCW 74.14B.901 and 74.14B.902.

SEVERABILITY -- EFFECTIVE DATE -- 1985 C 443: See notes following RCW 7.69.010.

SEVERABILITY -- 1970 EX.S. C 49: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 49 § 9.]

CROSS REFERENCES.
Abuse of children: Chapter 26.44 RCW.

JUDICIAL DECISIONS

PUBLIC POLICY.
A limited, albeit clear, public policy of encouraging citizens to cooperate with law enforcement when requested or required by law can be found in Washington's statutes. Gardner v. Loomis Armored, Inc., 128 Wn.2d 931, 913 P.2d 377 (1996).

SEATTLE UNIV. LAW REVIEW.
Murder by child abuse - Who's responsible after State v. Jackson? 24 Seattle U. L. Rev. 663 (2000).

Wis. Stat. § 940.34 (2006)

940.34. 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 s. 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) Any person licensed as a private detective or granted a private security permit under s. 440.26 who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.

(c).

1. In this paragraph, "unlicensed private security person" means a private security person, as defined in s. 440.26 (1m) (h), who is exempt from the permit and licensure requirements of s. 440.26.

2. Any unlicensed private security person who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.

(d) 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.

(2m) If a person is subject to sub. (2) (b) or (c), the person need not comply with sub. (2) (b) or (c) until after he or she has summoned or provided assistance to a victim.

(3) If a person renders emergency care for a victim, s. 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.

HISTORY: History: 1983 a. 198; 1985 a. 152, 332; 1987 a. 14; 1995 a. 461.

NOTES:

Notes supplied by the State of Wisconsin.

This section is not unconstitutional. For a conviction, it must be proved that an accused believed a crime was being committed and that a victim was exposed to bodily harm. The reporting required does not require the defendant to incriminate himself or herself as the statute contains no mandate that an individual identify himself or herself. Whether a defendant fits within an exception under sub. (2) (d) is a matter of affirmative defense. State v. LaPlante, 186 Wis. 2d 427, 521 N.W.2d 448 (Ct. App. 1994).

LexisNexis (R) Notes:

CASE NOTES

1. Wis. Stat. § 940.34 did not deny the prior existence of a parent's duty to protect a child; it merely provided the State with an option to prosecute a mother under former Wis. Stat. § 940.201 (now Wis. Stat. § 948.03(4)) or under Section 940.34, the "Good Samaritan" law, pursuant to Wis. Stat. § 939.65, for a knowing failure to protect a child from abuse. State v. Williquette, 129 Wis. 2d 239, 385 N.W.2d 145, 1986 Wisc. LEXIS 1807 (Wis. 1986), questioned by State v. Rundle, 176 Wis. 2d 985, 500 N.W.2d 916, 1993 Wisc. LEXIS 538 (Wis. 1993).

2. Individual's conviction for failing to summon or provide assistance to a victim of a crime in violation of Wis. Stat. § 940.34(2)(a) was upheld on appeal because contrary to the individual's argument, that statute was not unconstitutionally vague or ambiguous. State v. Brooks, 187 Wis. 2d 292, 523 N.W.2d 208, 1994 Wisc. App. LEXIS 942 (Wis. Ct. App. 1994).

3. Failure to aid statute, Wis. Stat. § 940.34, was not unconstitutionally vague and a conviction was proper where defendant, who was warned of an assault on the victim and witnessed it, knew that the victim would suffer bodily harm, within the definition of Wis. Stat. § 939.23(2), and was under an obligation to summon assistance and was not forced to provide information in violation of her right to remain silent. State v. La Plante, 186 Wis. 2d 427, 521 N.W.2d 448, 1994 Wisc. App. LEXIS 862 (Wis. Ct. App. 1994), review denied by 525 N.W.2d 733 (Wis. 1994).

4. Wis. Stat. § 940.34 did not deny the prior existence of a parent's duty to protect a child; it merely provided the State with an option to prosecute a mother under former Wis. Stat. § 940.201 (now Wis. Stat. § 948.03(4)) or under Section 940.34, the "Good Samaritan" law, pursuant to Wis. Stat. § 939.65, for a knowing failure to protect a child from abuse. State v. Williquette, 129 Wis. 2d 239, 385 N.W.2d 145, 1986 Wisc. LEXIS 1807 (Wis. 1986), questioned by State v. Rundle, 176 Wis. 2d 985, 500 N.W.2d 916, 1993 Wisc. LEXIS 538 (Wis. 1993).

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB005-DOA-PD-1-23-07 (1)
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to reporting of certain crimes
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Senator McGuire
Requester:
Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amou:..s do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	•	•	•	•	•	•
Travel	•	•	•	•	•	•
Contractual	•	•	•	•	•	•
Supplies	•	•	•	•	•	•
Equipment	•	•	•	•	•	•
Land & Structures	•	•	•	•	•	•
Grants & Claims	•	•	•	•	•	•
Miscellaneous	•	•	•	•	•	•
TOTAL OPERATING	•	•	•	•	•	•
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	•	•	•	•	•	•
1005 GF/Program Receipts	•	•	•	•	•	•
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	•	•	•	•	•	•

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill creates the crime of failure to report a violent crime when a person, other than a victim, witnesses certain crimes against a person and fails to report the crime in a timely manner. It is not possible to reliably predict the fiscal impact this legislation would have on the Agency. The Agency, therefore, submits an indeterminate fiscal note.

Prepared by: Quinlan Steiner
Phone 907-269-3501
Division: Public Defender Agency - Director
Date/Time 1/23/07 / 11:30 AM
Approved by: Melanie Millhorn, Deputy Commissioner
Date 1/23/2007
Agency: Administration

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB013-DOA-APOC-1-23-07
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration

Title: An Act prohibiting a legislator from providing consulting service to a person in the private...
RDU: AK Public Offices Commission
Component: AK Public Offices Commission

Sponsor: Senator Stevens
Requester: Senate Judiciary Committee
Component No.: 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill prohibits a legislator from providing consulting services to a person in the private sector or from agreeing to accept consulting fees from a person in the private sector. It will not result in additional costs to the Public Offices Commission.

Prepared by: Brooke Miles, Executive Director — Phone 465-2200
Division: Alaska Public Offices Commission — Date/Time 1/23/2007 8:30 a.m.
Approved by: Melanie Millhorn, Deputy Commissioner — Date 1/23/2007
Agency: Department of Administration

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB005-DOA-OPA-1-23-07
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Administration
Title: An Act relating to reporting of certain crimes
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Senator McGuire
Requester:
Component No.: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	•	•	•	•	•	•
Travel	•	•	•	•	•	•
Contractual	•	•	•	•	•	•
Supplies	•	•	•	•	•	•
Equipment	•	•	•	•	•	•
Land & Structures	•	•	•	•	•	•
Grants & Claims	•	•	•	•	•	•
Miscellaneous	•	•	•	•	•	•
TOTAL OPERATING	•	•	•	•	•	•
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	•	•	•	•	•	•
1005 GF/Program Receipts	•	•	•	•	•	•
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	•	•	•	•	•	•

Estimate of any current year (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill creates the crime of failure to report a violent crime when a person, other than a victim, witnesses certain crimes against a person and fails to report the crime in a timely manner. Atlhough it is not possible to accurately predict the fiscal impact this legislation would have on the Agency, the creation of a new crime, which may involve multiple persons charged out of a single incident, has the potential to increase Agency costs. Because we represent indigent defendants with whom the Public Defender Agency has a conflict, where the Public Defender Agency may represent only one person from a single incident, we could represent multiple defendants from that same incident. This means, for example, in a gang related crime, where there are multiple non-reporting witnesses, OPA may be required to represent many defendants. Therefore, the Agency submits an indeteminate fiscal note.

Prepared by: Joshua P. Fink
Phone 907-269-3501
Division: Office of Public Advocacy - Director
Date/Time 1/23/07 2:00 p.m.
Approved by: Melanie Millhorn, Deputy Commissioner
Date 1/23//07
Agency: Administration

(Revised 9/18/2006 OMB)

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: SB5-DPS-AST-1-23-07
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title "An Act relating to reporting of certain crimes."
RDU Alaska State Troopers
Component Alaska Bureau of Investigations
Sponsor Senator McGuire
Requester Senate Judiciary
Component No. 2744

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2007) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill expands the crime of failure to report a violent crime from crimes committed against a child to include violent crimes committed against a person. Passage of this legislation will have no impact on the Department of Public Safety.

Prepared by: Captain Hans Brinke
Phone 907-465-5505
Division Alaska State Troopers
Date/Time 1/23/07 3:50 PM
Approved by: Walt Monegan, Commissioner
Date 1/23/2007
Agency Department of Public Safety