

GERMANY’S DUTY-TO-RESCUE LAW SHOULD BE ADOPTED IN EVERY STATE

Mark H. Okumori *

I.	INTRODUCTION	258
II.	GERMANY’S DUTY-TO-RESCUE LAW	259
III.	ARGUMENTS AGAINST DUTY-TO-RESCUE LAWS	263
	A. <i>Challenges of Enforcing a Duty-To-Rescue Law</i>	263
	B. <i>The Practical Impact of a Duty-To-Rescue Law</i>	264
	C. <i>The General Effectiveness of a Duty-To-Rescue Law</i>	265
	D. <i>The Societal Impact of a Duty-To-Rescue Law</i>	266
IV.	THE GERMAN DUTY-TO-RESCUE LAW WITHSTANDS THE ARGUMENTS AGAINST DUTY-TO-RESCUE LAWS	267
	A. <i>Challenges in Enforcing a Duty-To-Rescue Law</i>	267
	B. <i>The Practical Impact of a Duty-To-Rescue Law</i>	268
	C. <i>The General Effectiveness of a Duty-To-Rescue Law</i>	270
	D. <i>The Societal Impact of Duty-To-Rescue Law</i>	271
V.	CONCLUSION.....	272

I. INTRODUCTION

In July 2017, five Florida teens taunted and filmed a drowning man, calling for help, as he struggled for his life in a pond in Cocoa, Florida.¹ The teens made no attempt to rescue the man or alert authorities at any time—even after the drowning man went underwater and failed to resurface.² At that point, one of the teens could even be heard laughing while saying “he

* Mark Hiroshi Okumori, J.D., Southwestern Law School (2021); M.B.A., California State University, Fullerton (2011); B.A. Business Administration, California State University, Fullerton (2009). Special thanks to my wife, Theresa Kerkenrath, for introducing me to this area of German law and for her unwavering support. Thank you to Southwestern Law School and the Southwestern Journal of International Law professors and staff for their guidance throughout the writing process and for the opportunity to present this article for publication.

1. Faith Karimi, *Teens Who Laughed and Recorded a Drowning Man in His Final Moments Won’t Face Charges*, CNN, <https://edition.cnn.com/2018/06/26/us/florida-teens-no-charges-drowning-man>, (June 26, 2018, 10:27 PM).

2. *Id.*

just died.”³ Florida state attorney called the teens’ actions a “callous disregard for human life” with “no moral justification.”⁴ Yet, none of the teens faced charges because, in the words of the Florida State Attorney, there is “no law that requires a person to provide emergency assistance.”⁵

Despite “no moral justification” for such a “callous disregard for human life,” legislation intended to address such situations failed to receive sufficient support to pass in Florida.⁶ Florida is not alone in its failure to pass any statute requiring a bystander to rescue another in an emergency. Only five of fifty states in the United States have any type of enforceable duty-to-rescue statute.⁷ Hawaii,⁸ Minnesota,⁹ and Rhode Island¹⁰ have statutes explicitly requiring witnesses to an emergency to notify emergency services, while Vermont,¹¹ and Wisconsin¹² have statutes implicitly requiring witnesses to do so.¹³ This picture is in stark contrast to laws in major European and Latin American countries that expressly provide for a general duty to rescue.¹⁴

This article will focus on Germany’s version of duty-to-rescue law, and specifically discuss (1) how the duty-to-rescue law applies in Germany; (2) the arguments against duty-to-rescue laws in the United States; and (3) responses to arguments against the enactment of duty-to-rescue laws in the United States. I conclude that every state in the United States should follow Germany’s lead and adopt a duty-to-rescue law.

II. GERMANY’S DUTY-TO-RESCUE LAW

The German duty-to-rescue statute states that a person “who does not provide help in the event of an accident, common danger, or emergency . . .

3. *Id.*

4. *Id.*; J.D. Gallop, *Teens Filmed, Mocked Drowning Man, Cocoa Police Say*, FLA. TODAY (July 21, 2017, 3:17 PM), <https://www.floridatoday.com/story/news/crime/2017/07/20/teens-filmed-mocked-drowning-man-cocoa-police-say/495518001/>.

5. *Id.*

6. *Id.*

7. Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U.L. REV. 77, 92 (2005).

8. HAW. REV. STAT. ANN. § 663-1.6 (West, Westlaw through 2021 Spec. Sess.).

9. MINN. STAT. ANN. § 604A.01(1) (West, Westlaw through 2021 Legis. Sess. and 1st Spec. Sess.).

10. 11 R.I. GEN. LAWS ANN. § 11-56-1 (West, Westlaw through Ch. 161 of 2021 Legis. Sess.).

11. VT. STAT. ANN. tit. 12, § 519 (West, Westlaw through Act 76 and M-6 of 2021-2022 Sess. of VT. Gen. Assemb.)

12. WIS. STAT. ANN. § 940.34 (West, Westlaw through 2021 Act 58).

13. *Id.* at 92-95.

14. *Id.* at 79.

without significant personal risk and without violating other important obligations, shall be punished with imprisonment for up to one year or with a fine.”¹⁵ This duty applies even if the victim dies, and it is determined that any rescue effort would have been in vain.¹⁶

German courts have held that a duty to rescue arises when a person is aware that a victim of an emergency situation, including an accident or criminal attack, needs rescue, and the person has the opportunity to rescue the victim without risking their own safety.¹⁷ For instance, in judgment 2 StR 115/15 of Germany’s Federal Court of Justice (BGH)¹⁸ the court held that the defendant was aware that the victim needed rescue, when defendant’s friends had physically battered the victim in the defendant’s apartment while the defendant left to purchase beer, because the victim had visible bleeding wounds, swelling on his face, and missing teeth.¹⁹ The court remanded the case to the lower court to determine if the defendant had an opportunity to intervene, and, therefore, a duty to rescue.²⁰

Alternatively, in judgment 2 StR 345/16²¹ the BGH held that although the defendant witnessed her tenants criminally abuse the victim and was aware of the victim’s need for rescue, she might not have had the opportunity to stop the abuse because the abusers were intoxicated, had criminal records and a reputation for not tolerating dissent, and the defendant could have feared retaliation from the abusers had she attempted to intervene.²²

Under the German law, to fulfill the duty to rescue, a witness to an emergency must (1) attempt to personally rescue, (2) provide the person in

15. Strafgesetzbuch [StGB] [Penal Code], § 323c(1), https://www.gesetze-im-internet.de/stgb/_323c.html (Ger.).

16. Bundesgerichtshof [BGH] [Federal Court of Justice] Sept. 15, 2015, 5 StR 363/15, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2015-9-15&nr=72365&pos=13&anz=27>; *Germans Fined over Man, 83, Left to Die in Bank Branch*, BBC NEWS (Sept. 18, 2017), <https://www.bbc.com/news/world-europe-41305575>.

17. Bundesgerichtshof [BGH] [Federal Court of Justice], Aug. 12, 2015, 2 StR 115/15, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2015-8&Seite=2&nr=72619&pos=84&anz=136>; Bundesgerichtshof [BGH] [Federal Court of Justice], May 14, 2013, VI ZR 255/11, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2013-5&Seite=5&nr=64532&pos=169&anz=238>.

18. BGH, 2 StR 115/15 (Ger.).

19. *Id.*

20. *Id.*

21. Bundesgerichtshof [BGH] [Federal Court of Justice], Apr. 11, 2017, 2 StR 345/16, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2017-4&Seite=5&nr=78291&pos=173&anz=257>.

22. *Id.*

peril with aid, or (3) notify rescuers.²³ However, the duty to rescue is limited by the reasonableness of each of these three actions under the circumstances of the situation—weighing the interests of the witness and the interests of the person in need of rescue.²⁴ In determining the reasonableness of a rescue, German courts consider the following factors: (1) the witness's own capabilities, (2) the person's distance from the scene of the accident, (3) the availability of aids, (4) the degree of danger faced by the person in peril, (5) the potential danger that the rescuer might face, (6) the extent of the potential damage, (7) the chances of a successful rescue, and (8) whether the parties in need of rescue are themselves responsible for the accident's occurrence.²⁵

For example, if the witness is physically incapable of assisting, liability from failure to rescue will not be imposed.²⁶ However, a witness is obligated to rescue a drowning person in circumstances where the drowning person is within half the distance of a witness' own reach, or if appropriate rescue aids are easily accessible to the witness.²⁷ But, when a person is in peril as a result of their own conscious decision to expose themselves to the risk of harm, witnesses have a reduced duty to rescue and, under certain circumstances, may be completely absolved of liability.²⁸ Liability for failure to rescue is also unlikely if a person would risk personal injury to execute the rescue.²⁹ The law does not require immediate rescue, but rather allows witnesses time to process the situation before they must act.³⁰

As a matter of practice, prosecutors are generally unlikely to prosecute a witness to an emergency if the witness alerts emergency services of the situation without personally attempting a rescue, regardless of circumstance.³¹ A 2016 incident in Essen, Germany, illustrates how this law is actively enforced. When an eight-three-year-old man collapsed next to an

23. *Unterlassene Hilfeleistung nach § 323c Abs. 1 StGB bei in Seenot geratenen Personen* [Failure to assist in accordance with Section 323c Paragraph 1 StGB for people in distress at sea], DEUTSCHER BUNDESTAG WISSENSCHAFTLICHE DIENSTE 5 (2018) (Ger.) [hereinafter *Wissenschaftliche Dienste Report*].

24. *Id.*

25. *Id.*

26. *Id.* at 5.

27. *Id.* at 5-6.

28. *Id.*

29. *See id.* at 4-6.

30. *See id.* at 4.

31. *Ein Obdachloser? Staatsanwaltschaft vermutet Schutzbehauptung*, SÜDDEUTSCHE ZEITUNG (Sept. 17, 2017, 7:44 PM), <https://www.sueddeutsche.de/panorama/sterbender-in-bankfiliale-in-essen-ich-habe-noch-nichts-vergleichbares-erlebt-1.3670785-2> [hereinafter SÜDDEUTSCHE ZEITUNG].

ATM,³² for the next twenty minutes, four people stepped over and around the stricken man to access the ATM machine behind him.³³ None of the four passersby offered any assistance or summoned emergency services.³⁴ Despite the fifth passerby alerting emergency services, the man passed away one week later from head injuries sustained in the fall.³⁵ The medical examiner noted that the man would have succumbed to his injuries even if he had received medical assistance sooner.³⁶

Nonetheless, three of the four passersby who failed to act, identified in closed circuit television (CCTV) footage, were prosecuted under Germany's duty-to-rescue law (one of the four passersby was not prosecuted due to medical reasons).³⁷ The prosecutor on the case argued that "the duty to help a fellow human being was blatantly violated" and that the court should give a clear signal that "we're not going in the direction of a society that looks away."³⁸ The court agreed with the prosecution, stating that the defendants were "completely indifferent" to the man's suffering and unwilling to help, and fined the three defendants between €2,400 to €3,600 each.³⁹

In another case, in 2017, in Heidenheim, Germany, a man crashed his motorcycle into a lamp post and suffered fatal injuries.⁴⁰ A cyclist witnessed the accident and began filming the aftermath of the accident on his cell phone, instead of alerting authorities or attempting to rescue the dying

32. BBC NEWS, *supra* note 16; *Unterlassene Hilfeleistung für Rentner in Bank: Angeklagte müssen Geldstrafen zahlen*, SPIEGEL (Sept. 18, 2017, 3:58 PM), <https://www.spiegel.de/panorama/justiz/rentner-in-bank-gericht-verhaengt-geldstrafen-wegen-unterlassener-hilfeleistung-a-1168518.html#:~:text=Unterlassene%20Hilfeleistung%20f%C3%BCr%20Rentner%20in,gleichg%C3%BCltig%20gewesen%2C%20sagte%20der%20Richter.>

33. BBC NEWS, *supra* note 16.

34. *Id.*

35. See SPIEGEL, *supra* note 32.

36. *Id.*

37. *Id.*; Strafgesetzbuch [StGB] [Penal Code], § 323c(1), https://www.gesetze-im-internet.de/stgb/_323c.html (Ger.); Lotte Meurkens, *German Amtsgericht on the Duty to Rescue*, MAASTRICHT UNIV. (Oct. 11, 2017), <https://www.maastrichtuniversity.nl/blog/2017/10/german-amtsgericht-duty-rescue>.

38. BBC NEWS, *supra* note 16.

39. *Id.*; Meurkens, *supra* note 37; Rebecca Joseph, *Hefty Fines for Germans Who Appeared 'Completely Indifferent' to Senior in Medical Distress*, GLOBAL NEWS (Sept. 19, 2017, 2:42 PM), <https://globalnews.ca/news/3754288/fines-germans-completely-indifferent-medical-distress/#:~:text=World-,Hefty%20fines%20for%20Germans%20who%20appeared%20'completely%20indifferent,to%20senior%20in%20medical%20distress&text=Three%20Germans%20were%20handed%20hefty,in%20hospital%2C%20the%20BBC%20reports;> SPIEGEL, *supra* note 32.

40. Kate Connolly, *German Police Hunt Man Who Filmed Dying Biker Instead of Helping*, GUARDIAN (Sept. 18, 2017, 4:39 PM), <https://www.theguardian.com/world/2017/sep/18/german-police-hunt-man-who-filmed-dying-biker-instead-of-helping>.

motorist.⁴¹ The motorist was pronounced dead at the scene by medical personnel upon their arrival.⁴² Police have sought to identify the cyclist, using dashcam footage, to press charges against him for his failure to rescue the dying motorist.⁴³

These examples of active enforcement of the duty-to-rescue law illustrate the emphasis that German law places on the overall public good—a characteristic absent in the United States. The United States has a no-duty-to-rescue approach, which was evident in the 2017 incident in Florida.⁴⁴ Nonetheless, a duty-to-rescue law continues to have its opponents in American law, as the following section illustrates.⁴⁵

III. ARGUMENTS AGAINST DUTY-TO-RESCUE LAWS

In the seminal U.S. case on the subject, *L.S. Ayres & Co v. Hicks*, from 1942, Chief Justice Curtis Shake observed that “there is no general duty to go to the rescue of a person who is in peril,” and it has remained the prevailing approach in the United States.⁴⁶ In the United States there is simply no duty to rescue a person who is in peril, sick, or injured, no matter how readily available a reasonable means of rescue may be.⁴⁷ Although, since 1942, inroads have been made in creating certain exceptions to the no-duty-to-rescue approach, this *general* no-duty-to-rescue rule still prevails in all but five states.⁴⁸ This rule is based on several arguments, posited in legal scholarship, that addresses both legal theory and public policy considerations.

A. Challenges of Enforcing a Duty-To-Rescue Law

Opponents of a duty-to-rescue law argue that challenges in enforcing such law may arise from (1) the difficulty in identifying offenders and (2)

41. *Id.*

42. *Id.*

43. *Id.*; Associated Press, *German Police Using Dashcam Footage to Find Accident Gawker*, SEATTLE TIMES (Sept. 19, 2017, 4:03 AM), <https://www.seattletimes.com/nation-world/german-police-using-dashcam-footage-to-find-accident-gawker/>.

44. See Karimi, *supra* note 1.

45. Marin Roger Scordato, *Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law*, 82 TUL. L. REV. 1447, 1453 (2008).

46. See *L.S. Ayres & Co. v. Hicks*, 40 N.E.2d 334, 337 (Ind. 1942); Jennifer L. Groninger, *No Duty to Rescue: Can Americans Really Leave a Victim Lying in the Street - What Is Left of the American Rule, and Will It Survive Unabated?*, 26 PEPP. L. REV. 353, 353 (1999).

47. Groninger, *supra* note 46, at 356; Scordato, *supra* note 45, at 1459.

48. Schiff, *supra* note 7; Groninger, *supra* note 46, at 355.

already overwhelmed prosecutors.⁴⁹ According to these arguments, the person in need of rescue, and the police, will rarely be able to identify those who failed to rescue, diminishing the enforceability of any duty-to-rescue law.⁵⁰ Moreover, prosecutors in many jurisdictions are overburdened with caseloads, each handling more than one thousand felony cases annually.⁵¹ Adding the burden of prosecuting duty-to-rescue law offenders would only exacerbate the current inefficiencies in the underfunded and understaffed American criminal justice system.⁵² Overburdened prosecutors, who already lack the resources to handle their caseloads would likely decline to prosecute minor criminal infractions.⁵³ Because of the pre-existing American hesitance in punishing those who fail to rescue, duty-to-rescue violations will likely be categorized as minor criminal infractions and go unpunished.⁵⁴ Therefore, any duty-to-rescue law would likely fail to be enforced.

B. *The Practical Impact of a Duty-To-Rescue Law*

On a practical level, opponents of the duty-to-rescue law argue that such a law would (1) obligate rescuers to risk injury; (2) be exploited by criminals; and (3) disincentivize cooperation in accident or criminal investigations.

First, opponents of duty-to-rescue law argue that rescuers may put themselves in harm's way, in an attempt to execute a rescue, especially given the conventional wisdom across lifesaving professions that rescue efforts should be left to well trained personnel.⁵⁵ Obligating a person to risk their safety to rescue another would result in people involuntarily putting their own safety at risk, and at least some of these people would harm themselves as a result of fulfilling the obligation.⁵⁶

Second, criminals could prey upon their victims by posing as someone in need of emergency aid, and then attack their would-be rescuers who come to their aid.⁵⁷ A duty to rescue rule would obligate people, who would not

49. See Scordato, *supra* note 45, at 1468; see Adam M. Gershowitz & Laura R. Killinger, *The State (Never) Rests: How Excessive Prosecutorial Caseloads Harm Criminal Defendants*, 105 NW. U.L. REV. 261, 262-63 (2011).

50. Scordato, *supra* note 45, at 1468.

51. Gershowitz & Killinger, *supra* note 49.

52. *Id.* at 263.

53. *Id.* at 298.

54. See generally Schiff, *supra* note 7, at 79 (The U.S. hesitance to adopt duty-to-rescue law can be inferred from the fact that only five out of the fifty states have adopted any duty-to-rescue law).

55. Scordato, *supra* note 45, at 1476.

56. *Id.* at 1476-77.

57. *Id.* at 1477.

otherwise stop to rescue another, to risk exposing themselves to criminal acts in the course of fulfilling a legal duty.⁵⁸

Lastly, those who oppose a duty-of-rescue law posit that such a law disincentivizes people, who witness an emergency but choose not to rescue the person in peril, from cooperating in investigations surrounding the emergency in an effort to conceal their failure to rescue.⁵⁹ This would result in fewer witnesses to an emergency willing to cooperate with police in investigating the emergency.⁶⁰

C. *The General Effectiveness of a Duty-To-Rescue Law*

Opponents of a duty-to-rescue also call into question the general effectiveness of such law. Some opponents argue that such a law would have little incremental effect on society because the majority of people who encounter a person in need of rescue would generally take steps to assist, regardless of a legal obligation.⁶¹ Therefore, any legal duty to rescue would only marginally increase the number of rescues, if at all.⁶²

Second, such opponents theorize that a person with the propensity to turn a blind eye to a person in peril, a “non-rescuer,” is more likely to rescue another in peril in the presence of other bystanders, motivated primarily to avoid being identified by bystanders as a party who failed to act.⁶³ However, the need for a non-rescuer to rescue a person in peril is less necessary in the presence of other bystanders—who might be more willing and able to render aid.⁶⁴ Because a legal duty to rescue would produce a greater number of rescue efforts when it is least necessary, the effect of a duty-to-rescue law is diminished.⁶⁵

Third, a duty-to-rescue law would deter people who initially fail to rescue a person in peril, but later change their minds out of fear of liability, from returning to the scene of the emergency to provide aid.⁶⁶ Such a person may feel that returning to the scene of the emergency, where witnesses identify them as a person who failed to help, would risk their exposure to liability for failure to assist the person in peril in the first instance.⁶⁷

58. *Id.*

59. *Id.* at 1478.

60. *Id.*

61. *Id.* at 1464.

62. *Id.*

63. *Id.* at 1468.

64. *Id.*

65. *Id.*

66. *Id.* at 1479.

67. *Id.*

Fourth, an increased number of rescue efforts would also increase the likelihood that a rescuer inadvertently causes more harm to the person in peril, and decreases the quality of the rescue.⁶⁸ This argument is premised on the assertion that a duty-to-rescue law will only impact non-rescuers' propensity to rescue, and that such non-rescuers, who assist only out of legal obligation, are likely to provide a lower quality rescue effort than a voluntary rescuer and could harm the person in peril.⁶⁹

This argument also presumes that the overwhelming majority of non-rescuers would change their behavior only from fear of liability, and that non-rescuers are therefore more likely to rescue a person in peril when they are most likely to be held liable by bystander identification⁷⁰ when bystanders are present.⁷¹ Since bystanders are less inclined to rescue once someone else, the non-rescuer, has begun rescue efforts, the non-rescuer's lower quality rescue would effectively replace the higher quality rescue a voluntarily rescuer might have otherwise furnished.⁷²

D. The Societal Impact of a Duty-To-Rescue Law

Opponents of a duty-to-rescue law also base their position on the impact that such law would have on society. Namely, (1) the obligatory risk rescuers would have to take, (2) the incompatibility of such law with American values, and (3) the decreased altruistic perception of rescue.

Because a civilian rescuer's actions will always be subject to the standard of reasonableness, such rescuers could be subject to liability if their efforts cause more harm to the person in peril. In that case, they would be deemed to have acted unreasonably during the rescue.⁷³ By being forced to act, the rescuers might be unable to choose whether to subject their actions to scrutiny under the reasonableness standard and expose themselves to potential liability.⁷⁴ Such an obligation is an infringement on a person's freedom to choose whether they want to risk being exposed to liability for failure to act reasonably.⁷⁵

Such an affirmative duty to rescue also conflicts with the traditional American value of individualism—the welfare of the individual over

68. *Id.* at 1471.

69. *Id.* at 1472.

70. *Id.*

71. *Id.* at 1473.

72. *Id.*

73. *Id.* at 1475.

74. *Id.*

75. *Id.* at 1476.

society—and capitalism.⁷⁶ Under an individualistic view of society, individuals should look towards themselves, rather than to the state, to address their needs.⁷⁷ This view asserts that charity should only be encouraged, not mandated, by the state.⁷⁸ A rescue of another person is a form of charity to the victim, so any duty-to-rescue law amounts to mandated charity—an outcome inconsistent with American values of individualism and capitalism.⁷⁹

Additionally, voluntary rescuers enjoy a higher sense of self-esteem and greater regard from others for their heroic actions.⁸⁰ If a legal duty to rescue is adopted, such heroic acts would be perceived as no more than a fulfillment of one's legal obligation.⁸¹ This shift in perception diminishes the social recognition of desirable behavior and negatively impacts the self-esteem and regard from society that voluntary rescuers might otherwise receive.⁸²

These arguments form the basic rationale behind the no-duty-to-rescue law in the United States.⁸³ However, as the following section demonstrates, in practice, Germany's federal duty-to-rescue law addresses each of these arguments.

IV. THE GERMAN DUTY-TO-RESCUE LAW WITHSTANDS THE ARGUMENTS AGAINST DUTY-TO-RESCUE LAWS

A. *Challenges in Enforcing a Duty-To-Rescue Law*

There may be instances when violators of a duty-to-rescue law may not be identified, like in the 2017 case in Heidenheim.⁸⁴ However, contrary to what opponents of a duty-to-rescue law argue, today's technological advancements enable video identification via CCTV and other video recording devices across most of the United States.⁸⁵ In fact, there were

76. Schiff, *supra* note 7, at 117-19.

77. *Id.* at 117.

78. *Id.*

79. *Id.* at 117-18, 120-21.

80. Scordato, *supra* note 45, at 1473-74.

81. *Id.* at 1474.

82. *Id.*

83. *Id.* at 1479-80.

84. Connolly, *supra* note 40.

85. Irina Ivanova, *Video Surveillance in U.S. Described as on Par with China*, CBS NEWS: MONEYWATCH (Dec. 10, 2019, 6:36 PM), <https://www.cbsnews.com/news/the-u-s-uses-surveillance-cameras-just-as-much-as-china/#:~:text=When%20it%20comes%20to%20video,watching%2C%20not%20necessarily%20the%20government.>

approximately seventy million surveillance cameras across the United States in 2019—more than one for every five people.⁸⁶

Given the scope of video surveillance in the United States, video identification of people who fail to assist a person in peril would be no more challenging than identifying perpetrators of any other crime, who flee a crime scene. This is precisely the mechanism Germany authorities used to identify the three defendants in the 2016 case in Essen.⁸⁷

Further, although the excessive caseloads that American prosecutors face is undoubtedly a strain on the American criminal justice system, Germany's duty-to-rescue law violations would be classified as misdemeanors if enforced in the United States.⁸⁸ Misdemeanors are generally less resource-intensive than felonies.⁸⁹ Furthermore, American prosecutors have the privilege of prosecutorial discretion and may choose the cases they prosecute.⁹⁰ Therefore, American prosecutors may follow the lead of Germany in only prosecuting cases where the witness to the emergency fails to at least alert emergency services.⁹¹

Prosecuting duty-to-rescue misdemeanors would pose a minimal impact on the available resources in the American criminal justice system. Further, any fiscal impact could be mitigated by fines collected from duty-to-rescue offenders.⁹² The importance of saving a person's life in an emergency situation clearly outweighs such a minimal impact on state resources.

B. *The Practical Impact of a Duty-To-Rescue Law*

While the German duty-to-rescue law requires a person to rescue another in peril, the statute also provides that any rescue be attempted only if it can be executed "without personal risk."⁹³ Similar provisions also exist under

86. *Id.*

87. BBC NEWS, *supra* note 16.

88. Under Strafgesetzbuch [StGB] [Penal Code], § 323c(1) failure to rescue is punishable by "imprisonment for up to one year or... a fine." In the United States, offenses that are punishable by imprisonment of up to one year are classified as misdemeanors under 18 U.S.C.A. § 3559. Therefore, a duty-to-rescue offense would be classified as a misdemeanor in the United States.

89. Gershowitz & Killinger, *supra* note 49, at 266 (the fact that misdemeanors are less resource-intensive can be inferred from a national study stating that recommended caseloads for public defenders should not exceed 150 felonies or 400 misdemeanors per year).

90. Wayne R. LaFare, *The Prosecutor's Discretion in the United States*, 18 AM. J. COMPAR. L. 532, 532 (1970).

91. SÜDDEUTSCHE ZEITUNG, *supra* note 31.

92. Strafgesetzbuch [StGB] [Penal Code], § 323c(1), https://www.gesetze-im-internet.de/stgb/_323c.html (Ger.) (failure to rescue is punishable by "imprisonment for up to one year or... a fine") (emphasis added).

93. *Id.*

Hawaii, Minnesota, Rhode Island, Vermont, and Wisconsin duty-to-rescue laws.⁹⁴ German case law has further clarified that one of the considerations in determining if a failure to rescue is reasonable is the witness's own capabilities.⁹⁵ For example, the law would not hold a person liable for failing to jump into a lake to save a drowning man if the person was incapable of swimming. This interpretation was applied by the BGH in judgment 2 StR 345/16, where the defendant was found not guilty when the persons inflicting the harm on the victim could have retaliated against the defendant if the defendant had intervened.⁹⁶

Further, even if a person is unsure of whether a situation is one that poses a risk to their safety, and whether they would be held liable for failing to rescue under the German law, the alternative of merely notifying emergency services would satisfy the legal obligation to rescue without posing any of these risks.⁹⁷ These provisions substantially, if not completely, alleviate the risk of harm to potential rescuers acting under an obligation to rescue.

With regard to instances where criminals might attempt to exploit duty-to-rescue laws by posing as victims of an emergency and then attacking their rescuer, such situations are unlikely to occur, considering that they are limited to the following two instances. First, where a criminal might attempt to employ this tactic in an area where other bystanders are present, the German duty-to-rescue law considers criminal attacks to be an emergency and would obligate those bystanders to assist the victim of the crime, thereby deterring the criminal conduct.⁹⁸ Second, when a criminal might attempt to employ this tactic in an isolated area, the criminal target need not personally assist the "victim," but they could alert emergency services. Considering that these scenarios cover all conceivable possibilities of criminal misuse of a duty-to-rescue law, the argument is not persuasive.

The duty-to-rescue law could initially deter people who witness an emergency and choose not to rescue from cooperating in the investigation

94. Schiff, *supra* note 7, at 92-94.

95. *Wissenschaftliche Dienste Report*, *supra* note 23.

96. Bundesgerichtshof [BGH] [Federal Court of Justice], Apr. 11, 2017, 2 StR 345/16, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2017-4&Seite=5&nr=78291&pos=173&anz=257>.

97. SÜDDEUTSCHE ZEITUNG, *supra* note 31.

98. Bundesgerichtshof [BGH] [Federal Court of Justice], Aug. 12, 2015, 2 StR 115/15, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2015-8&Seite=2&nr=72619&pos=84&anz=136>; Bundesgerichtshof [BGH] [Federal Court of Justice], May 14, 2013, VI ZR 255/11, juris (Ger.), <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2013-5&Seite=5&nr=64532&pos=169&anz=238>.

surrounding the emergency for fear of their own culpability for failing to rescue coming to light.⁹⁹ However, there is a one-in-five chance that such people would be captured on surveillance cameras and placed at the scene regardless of whether the person cooperates in the investigation.¹⁰⁰ Therefore, the possibility that a person might be identified as a non-rescuer would have little to do with their decision to cooperate in investigations surrounding the emergency—because they would likely be identified either way. Further, the German duty-to-rescue law falls under its criminal code, and by adopting a duty-to-rescue provision in U.S. criminal code, prosecutors could exercise their prosecutorial discretion to offer the violator a plea deal in exchange for their cooperation.¹⁰¹ Therefore, while not necessarily incentivizing initial cooperation with investigations, non-rescuers could later be sought out relatively easily and then persuaded to cooperate.

C. *The General Effectiveness of a Duty-To-Rescue Law*

There is insufficient evidence to draw a conclusion about the frequency in which a person would act to rescue another in peril.¹⁰² Therefore, the assumption that the majority of people who would voluntarily rescue a person in peril is unfounded. Further, even if these assumptions were true, the argument fails to consider the stakes in every instance of rescue—life or death. Even if a duty-to-rescue law would only marginally increase the instances in which a rescue occurs, the societal cost of failing to save a life, at little cost to the rescuer, is significant no matter the number instances. Consider the feelings of the family of the man who drowned in Florida while being taunted by teens.¹⁰³

There is also no support for the assertion that a non-rescuer is more likely to rescue another in peril in the presence of other bystanders. However, even if this assertion were factually based, the argument that a duty-to-rescue law is unnecessary, because it would predominantly encourage non-rescuers to rescue a person in peril when other bystanders would have voluntarily done so anyway, fails to consider situations where only the non-rescuer was present at the scene of an emergency. Under these circumstances, a non-rescuer, who would otherwise fail to rescue, would be motivated to attempt a rescue and could prove critical to the person in peril.

99. Scordato, *supra* note 45, at 1478.

100. Ivanova, *supra* note 85 (inferred from the fact that there was more than one surveillance camera for every five people in the United States in 2019).

101. Scordato, *supra* note 45, at 1478; LaFave *supra* note 90.

102. Scordato, *supra* note 45, at 1464.

103. Karimi, *supra* note 1.

The German duty-to-rescue law also addresses the argument that the law would deter people who initially fail to rescue a person in peril, but later change their minds for the fear of liability.¹⁰⁴ As discussed above, the German duty-to-rescue law does not require a witness to an emergency to act immediately.¹⁰⁵ Rather, the law allows time to gather one's thoughts before acting. Such a "grace period" leaves more than enough time for a passerby witnessing an emergency to reconsider an initial decision not to seek or render assistance. This person could return to the scene of the emergency to either personally assist or merely notify emergency services, without the fear of liability for not acting immediately.

Although it may be true that bystanders are less inclined to rescue once someone else has begun rescue efforts, there is no evidence to support the assertion that a non-rescuer's rescue efforts would be of any lower quality than any other rescuer. Such assumptions cannot be the basis for a rationale that suggests that a law with the potential to save lives should not be enacted. Further, this argument would only apply to situations where bystanders are present. In the absence of any bystanders, the only chance a person in peril has of rescue would be the one administered by the person present, regardless of whether that person acted out of obligation to the law or voluntarily.

D. *The Societal Impact of Duty-To-Rescue Law*

While a rescuer is bound by the doctrine of reasonableness under the German duty-to-rescue law, and while a rescuer could risk liability, despite being obligated to rescue a person in need of rescue, the German law does not necessarily require a person to personally rescue a person in peril.¹⁰⁶ Mere notification of emergency services, as the fifth person in the 2016 Essen case did, is sufficient to satisfy the duty created by law.¹⁰⁷ Indeed, a rescuer would risk no potential liability in merely dialing 911 on his cell phone and notifying emergency services of the situation. State laws in Hawaii, Minnesota, and Wisconsin already explicitly articulate a "notification" requirement in their respective statutes.¹⁰⁸ There remains no reason why a similar provision fails to be adopted across all fifty states.

Although some may argue that a duty-to-rescue law is incompatible with American values, five states in the United States, Vermont, Minnesota, Wisconsin, Rhode Island, and Hawaii, have, nonetheless, already adopted

104. Scordato, *supra* note 45, at 1479.

105. *Wissenschaftliche Dienste Report*, *supra* note 23.

106. *Wissenschaftliche Dienste Report*, *supra* note 23; SÜDDEUTSCHE ZEITUNG, *supra* note 31.

107. SÜDDEUTSCHE ZEITUNG, *supra* note 31; BBC NEWS, *supra* note 16.

108. Schiff, *supra* note 7, at 92-95.

duty-to-rescue laws very similar to that in Germany.¹⁰⁹ The German law penalizes a person “who does not provide help in the event of an accident, common danger or an emergency, when the person is able to do so, without significant personal risk.”¹¹⁰ Similarly, Hawaii’s statute requires a person to “obtain or attempt to obtain aid . . . if the person can do so without danger or peril to any person.”¹¹¹ Minnesota’s statute also requires “a person at the scene of an emergency . . . to give reasonable assistance to the exposed person” and only “to the extent that the person can do so without danger or peril to self or others.”¹¹²

These U.S. state statutes are substantially similar to their German equivalent and have been enacted by democratically elected state legislators whose actions reflect the will of their constituents. These statutes have also been recognized in their respective state courts and have not been ruled to encroach on American freedoms.¹¹³ Such examples indicate the compatibility of a duty-to-rescue law with the American values and set at least an aspirational ethical standard for the society—one where people do not look the other way when a fellow human being is in peril.

Further, the argument that social recognition of heroic rescue efforts would be diminished by a legal obligation to rescue, effectively places a higher importance on voluntary rescuers’ self-esteem and social recognition than the lives that could potentially be saved. There should be no question that the potentially life-saving outcomes of a duty-to-rescue law should take precedence over boosting one’s self-esteem and social recognition.

V. CONCLUSION

On balance, the arguments for adopting a law similar to the German duty-to-rescue law are persuasive. Therefore, legislators in all fifty states should seriously consider adopting similar legislation. Doing so would establish a clear enforcement policy that favors reasonable rescue efforts and might deter situations, such as the one in Florida in 2017, from occurring again.

109. *Id.* at 92.

110. Strafgesetzbuch [StGB] [Penal Code], § 323c(1), https://www.gesetze-im-internet.de/stgb/_323c.html (Ger.).

111. HAW. REV. STAT. ANN. § 663-1.6 (West, Westlaw through 2021 Spec. Sess.).

112. MINN. STAT. ANN. § 604A.01(1) (West, Westlaw through 2021 Legis. Sess. and 1st Spec. Sess.).

113. *State v. Cabral*, 810 P.2d 672, 677 (Haw. Ct. App. 1991); *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794, 797 (Minn. Ct. App. 2002).